International Labour Conference
87th Session 1999

Report V (2)

Maternity protection at work

Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)

International Labour Office Geneva

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Fifth item on the agenda

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INTRODUCTION

The Governing Body of the International Labour Office, at its 268th Session (March 1997), decided to place on the agenda of the 87th Session (1999) of the International Labour Conference the revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and its accompanying Recommendation, 1952 (No. 95).

The question will be dealt with by the double discussion procedure. In accordance with Article 39 of the Standing Orders of the Conference, which deals with the preliminary stages of the double discussion procedure, the Office drew up a preliminary report,[1] intended to serve as the basis for the first discussion of this question. After briefly summarizing the background to the Governing Body's decision, the report examines the law and practice on the subject in various countries. This report, accompanied by a questionnaire, was sent to the governments of member States of the ILO, which were invited to reply to the questionnaire and send their replies to the Office no later than 30 June 1998.

At the time of drawing up this report, the Office had received replies from the governments of the following 107 member States:[2] Algeria, Angola, Argentina,[3] Australia, Austria, Bahrain, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria,[4] Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Greece, Guyana, Honduras, Hungary, India, Indonesia, Islamic Republic of Iran, Italy, Jamaica,[5] Japan, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Mexico, Republic of Moldova, Morocco, Mozambique, Myanmar, Namibia,[6] Netherlands, New Zealand, Nicaragua, Niger, Norway, Oman, Pakistan, Papua New Guinea, Peru, Philippines,[7] Poland, Portugal, Qatar, Romania, Russian Federation, San Marino,

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[1] ILO: *Maternity protection at work*, Report V(1), International Labour Conference, 87th Session, Geneva, 1999.

[2] Replies that arrived too late to be included in the report may be consulted by delegates at the Conference.

[3] The reply from the Government of Argentina consisted of observations from the National Council of Women.

[4] The reply from the Government of Bulgaria consisted of observations by the Ministry of Health, the Ministry of Justice and European Legal Integration and the National Social Security Institute.

[5] The reply from the Government of Jamaica was formulated by the Bureau of Women's Affairs.

[6] The reply from the Government of Namibia consisted of observations from the Social Security Commission.

[7] The reply from the Government of the Philippines consisted of observations from the Labour Advisory and Consultative Council.

Saudi Arabia, Seychelles, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela, Viet Nam, Zimbabwe.

The attention of governments was drawn to article 39, paragraph 1, of the Standing Orders of the Conference, in which they are requested "to consult the most representative organizations of employers and workers before finalizing their replies". Governments were asked to indicate which organizations had been so consulted.

The Governments of the following member States reported that the employers' or workers' organizations had been consulted or involved in the drafting of the replies: Algeria, Argentina, Australia, Austria, Bahrain, Barbados, Belarus, Botswana, Brazil, Cambodia, Canada, Chile, Colombia, Comoros, Croatia, Cyprus, Denmark, Ecuador, Estonia, Finland, Ghana, Guyana, Hungary, Islamic Republic of Iran, Italy, Jamaica, Japan, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Luxembourg, Malaysia, Mauritius, Myanmar, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Peru, Philippines, San Marino, Saudi Arabia, Seychelles, Slovakia, Slovenia, Sri Lanka, Sweden, Tajikistan, Togo, Turkey, Ukraine, Venezuela, Viet Nam, Zimbabwe.

The Governments of the following member States included in their replies the opinions of employers' or workers' organizations: Barbados, Brazil, Czech Republic, Denmark, Finland, Jamaica, Republic of Korea.

The Governments of the following member States sent separately the replies from employers' or workers' organizations, and in some instances those replies were received directly at the Office: Argentina, Australia, Austria, Azerbaijan, Belgium, Benin, Brazil, Canada, Chile, Colombia, Cyprus, Dominica, Ecuador, Egypt, Estonia, Ethiopia, France, Germany, Ghana, Honduras, India, Indonesia, Iraq, Italy, Japan, Jordan, Lithuania, Malaysia, Mauritius, Morocco, Mozambique, Namibia, Netherlands, New Zealand, Pakistan, Peru, Poland, Portugal, Romania, South Africa, Spain, Suriname, Switzerland, Trinidad and Tobago, Turkey, United States, Uruguay, Venezuela, Zimbabwe.

In accordance with article 39, paragraph 1, of the Standing Orders of the Conference, the replies from the most representative employers' or workers' organizations, are reproduced or mentioned in this report.

If the Conference decides that it is advisable to adopt one or more international instruments, the Office will draw up, on the basis of the conclusions adopted by the Conference, one or more draft instruments to be submitted to governments. It will then be for the Conference to make a final decision on the subject at a future session.

This report has been drawn up on the basis of the replies received, the substance of which is given in the following pages.[5] Brief commentaries identify the major issues for consideration by the Conference. The Proposed Conclusions appear at the end of the report.

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[5] To meet the wishes of the Conference, the replies have been presented as concisely as possible.

REPLIES RECEIVED AND COMMENTARIES

This section contains the substance of the general observations made by governments and of their replies to the questionnaire, as well as of replies received from employers' and workers' organizations.

After examining the general observations, each question is reproduced and followed by a list indicating the governments that replied to it, grouped in accordance with the nature of the replies (affirmative, negative or other). Where a government submitted observations qualifying or explaining its reply, and where observations have been received from employers' or workers' organizations, the substance of each observation is given, in alphabetical order of countries, after the above-mentioned list. Observations that are the equivalent of a simple affirmative or negative reply are not reproduced unless they are replies of workers' or employers' organizations which differ from the replies of their respective governments. Where a government deals with several questions in one reply, the substance of its reply is given where appropriate.

Some governments gave information on their national law and practice. This information, while most useful for the work of the Office, has not been reproduced unless it is essential to an understanding of the relevant reply.

The summary of the observations on each question is followed by a brief Office commentary referring to the relevant Point (or Points) of the Proposed Conclusions at the end of this report.

General observations

Australia. Australia favours a flexible, facilitative approach rather than a prescriptive approach when setting standards for maternity leave. Fixing specific minimum standards would be inappropriate. The new Convention should be rights-based as compared to the current Convention which is protectionist-based. Australia supports a "promotional" approach to the revision of Convention No. 103 which does not set a definite objective to be attained immediately, but formulates a general policy to be followed by each country with due regard to its particular circumstances. The Convention would require each ratifying member State to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, maternity leave policy. The policy should take due account of the stage and level of economic development and the relationship between maternity protection objectives and other social and economic objectives. In the application of the Convention the representatives of persons affected by the measures taken would be consulted concerning maternity protection policies. Issues such as the type, quantum and mechanisms for provision of maternity leave should be left to individual member States to determine. The Recommendation would provide suggestions as to implementation and address higher standards for those who want a higher goal than the minimum standard.

Austria. Austrian Chamber of Commerce (WKÖ): The subject is of no relevance from the Austrian point of view. For this reason, the WKÖ is against the adoption of another international instrument. The requirements indicated in the questionnaire are more than met in Austria.

Manufacturers' Association (IV): There is no basic objection to a revision of the Convention to make it more flexible and adaptable to national conditions. However, from the Austrian point of view, any revision resulting in an even greater burden on enterprises and detrimental to employment opportunities for women would have to be rejected. Reference is made here in particular to Article 4(8) of the Convention, which is not implemented sufficiently widely.

Belgium. In considering maternity protection, it is important to consider the repercussions of regulations concerning equality of treatment between men and women on the labour market. The length of maternity leave should not be too long, otherwise there is a risk of negative consequences on women's employment, on hiring and on the level of remuneration during leave.

National Labour Council (CNT): There is no reason to call into question the basic principles of Convention No. 103. The revised instrument(s) should be more flexible concerning the means employed to reach the goals, but without lowering the level of protection provided in Convention No. 103. Excessive detail should be avoided. When benefits are financed exclusively through employer contributions, as in Belgium, the level of contribution should not be set or raised in a manner which would have negative repercussions on employment. Overly protective or inadequate provisions could compromise equality of opportunity for women in the labour market. ILO instruments should be conceived so as to encourage member States to examine their current situation compared to the goals defined in the instruments with a view to achieving progress towards these goals, according to their national circumstances. Provisions in the revised instrument(s) should not impede the application or ratification of other international instruments, such as the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Part-time Work Convention, 1994 (No. 175), and the Home Work Convention, 1996 (No. 177).

Czech Republic. Czech-Moravian Chamber of Trade Unions (ČMK OS): The Convention should not be built on minimal requirements alone; it must serve as a standard for the first half of the next century.

Denmark. The Government supports the revision of Convention No. 103 and Recommendation No. 95 in light of women's ever-increasing participation in the labour market. In the final declaration of the United Nations Women's Conference (Beijing, 1995), the removal of discriminatory employment practices based on women's reproductive roles and functions was emphasized. Women's reproductive role is one of the most significant reasons for the lack of equality on the labour market. Special measures are required to reduce these disadvantages as much as possible. A revised Convention should not be too detailed, but should lay down basic rights for protection of motherhood as a framework to be filled out by the member States themselves. Financial support of the mother must be ensured during maternity leave and a safe working environment provided for pregnant and nursing women.

Germany. Article 4(8) of Convention No. 103, relieving the employer of all liability for the cost of benefits, prevented Germany from ratifying the Convention. The avoidance of such a provision is to be welcomed.

Confederation of German Employers' Associations (BDA): Adequate maternity protection is a prerequisite for women's participation in the world of work. Because up-to-date, pertinent international maternity protection standards may provide valuable guidance for many countries, we endorse the proposal to revise Convention No. 103 and Recommendation No. 95. The purpose of the revision should be above all to eliminate unnecessary detail and inflexibility from these instruments which, once revised, should focus exclusively on the definition of minimum standards in the essential areas of maternity protection. These minimum standards should be formulated in such a way that they are attainable, with a reasonable degree of effort, throughout the world, particularly in the developing countries. They should be as flexible as possible to allow implementation through national law. The revision should not dispense with important provisions which retain their relevance, in particular Article 4(8) of the Convention. Placing the burden of costs for maternity protection on individual employers would effectively reduce opportunities for women in the labour market and would be counter to the major objective of promoting employment.

Italy. Many of the provisions of Recommendation No. 95 should be included in the new text of the Convention. Consideration should be given to the protection of the reproductive health of the couple. Principles of the protection of working mothers should be defended and the minimum elements of protection of reproductive health introduced. This should include reference to the assessment of risks; the specific obligations of the employer and the competent institutions to provide information respecting risks to the foetus and both members of the couple; and the establishment of specific recommendations on prevention.

General Confederation of Industry (CONFINDUSTRIA): Despite the affirmed intention of the ILO to provide greater flexibility in the new instruments, such an approach is not evident in the questionnaire. The proposed approach would make wide ratification difficult. A much wider area should have been reserved for bargaining at the national level. Texts should be more flexible, realistic and effective to avoid once again creating standards which are difficult to adapt to the reality of countries where the legislative framework and collective bargaining are still far from those of the most advanced countries. In any case, for advanced countries, the new international instruments do not provide any improvement over current maternity protection at work, which is already strong and widespread. Above all, the risk of creating standards which are of little use to countries which need them and superfluous for others must be avoided.

Japan. It is important for each country to furnish conditions to ensure that women's maternity is respected in the workplace, and that they can give birth to their children with peace of mind while remaining employed. It seems worthwhile to adopt new international instruments that will facilitate the provision of working conditions relating to maternity protection by each Member in accordance with their various national situations. The aim of this revision is to adopt instruments that are easy to apply and to avoid the inclusion of provisions that are too detailed.

Japan Federation of Employers' Associations (NIKKEIREN): Revised instruments should respond to the current demands of the changing environment impinging on women's labour. The content of the existing instruments must be reexamined to determine why more member States have not ratified the Convention. A more realistic and flexible approach must be adopted so that more countries might ratify the new instrument and use it as a reference. Significant problems we see with the present instruments notably include: Articles 3(6), 4(6) and 5(2) of Convention No. 103 and Paragraphs 2(1), 3(2), 5(1), 5(4) and 5(5) of Recommendation No. 95 which are discussed in our comments to specific questions below. The content and scope of maternity protection must be clarified and explained in the revised Convention and Recommendation. Otherwise it will be difficult to examine the appropriateness of provisions. Maternity protection should be limited to protection from discriminatory treatment in employment based on reproductive roles rather than protection of women. Excessive protection works against the interests of women and may lead to discrimination.

Japanese Trade Union Confederation (JTUC-RENGO): The strengthening of maternity protection is a prerequisite to the promotion of equality between men and women in employment. Maternity protection must not be used to justify any unfavourable treatment. The conclusions of the United Nations Fourth World Conference on Women (Beijing, 1995) and the United Nations Conference on Population and Development (Cairo, 1994) should be taken into consideration in revising the Convention.

Portugal. The protection of maternity is one of the conditions governing equality at work between male and female workers. Although encompassed in the constitutions of many countries and in international instruments, equality is far from being fully achieved. One reason for the low level of ratification of Convention No. 103 is its lack of flexibility, in particular with respect to its scope, to the mandatory nature of postnatal leave and to the total prohibition of dismissal. Nevertheless, many countries have adopted equivalent or more favourable standards, and have taken further steps not contemplated by Convention No. 103. New maternity protection standards ought to be adopted which can be widely accepted and which take into account recent progress. The instrument or instruments should be flexible and up to date. Their scope should take into account the concern expressed in the resolution on Equal Opportunities and Equal Treatment for Men and Women in Employment, adopted at the 71st Session of the International Labour Conference, that "a gradual extension of maternity protection to women in all sectors of activity and enterprises of all sizes, including women who are casual, temporary, part-time, subcontract and home-based workers as well as self-employed and family workers" should be examined as a matter of priority, due account being taken of national conditions.

Confederation of Portuguese Business (CCP): The CCP is not in favour of the revision of Convention No. 103 and Recommendation No. 95 for the following reasons: (1) a Convention or Recommendation should contain only minimum principles to allow ratification by the countries concerned; (2) each country should be free to set the legislative framework most suited to its economic and cultural conditions; (3) Portuguese legislation amply covers maternity in employment, and there is a National Commission to ensure equality in work and employment; (4) maternity is an undoubted social benefit which should be protected, so long as it does not become a factor of inequality at work. Protection of maternity should not become an "advantage" for certain workers.

Singapore. The present maternity provisions in our national law which provide paid maternity leave, the possibility for extended unpaid leave, employment protection and tax and financial incentives, have served us well, even though some are less favourable than those provided in the Convention. We are of the view that there is no necessity to revise the Convention. Providing more generous maternity benefits and greater protection for women, such as nursing facilities, would in the long run work to women's disadvantage. Employers may discriminate against women in employment if they find that employing women results in higher costs and greater rigidity in the management of their resources. In addition, enhancing the maternity leave would place an unnecessary financial burden on employers, who not only have to pay for the women's absence but also pay for relief staff or overtime to cover their duties during the absence. Considering that the vast majority of employers are small firms, this added cost burden would be a deterrent to the employment of women. Furthermore, given the small pool of our local workforce and our tight labour market, increasing the time away from work of working mothers and the added costs of longer maternity provision are counter-productive.

Sweden.

A proposed second part to the Convention, containing provisions on parental leave

In order to respond more adequately to the demands of present-day working parents, the ILO, in a second part of the new Convention, should move one step further away from a purely maternal to a parental benefit. One of the best ways of supporting families is by enabling both parents to be gainfully employed. The ILO should therefore enlarge the scope of the Convention so as to include the family's combined responsibility for its children.

The ILO Workers with Family Responsibilities Convention (No. 156) and its accompanying Recommendation (No. 165) assume both men and women to have such responsibilities. Shared parental responsibility is specifically addressed in ILO Report V(1): *Maternity protection at work*. A revised Convention on maternity protection ought, similarly, to deal with shared parental responsibility for children in the family. The Convention could be constructed in several parts which countries can ratify as and when possible. The intention of this arrangement, i.e. gradual accession to the two parts of the Convention, is to make possible widespread ratification and also to make the Convention relevant to countries with different degrees of protection in connection with pregnancy and childbirth.

Parental benefit

The primary aim of a parental benefit is consideration for the child's best interests. A further aim is equality between the sexes, which in turn affects employers, employees and society at large. Responsibility for the children will be broadened by introducing the possibility of both parents taking leave of absence in connection with childbirth. This will also provide real opportunities for influencing and developing equality between the sexes. A parental benefit highlights the duty of fathers to participate in the care and supervision of children in the family.

Qualification/Scope

All employees should have access to parental benefit. The benefit system should also include self-employed persons, students and unemployed persons, as far as possible.

Protection of employment

Job security for persons availing themselves of the benefit must be guaranteed. In addition, on returning to work the parent should be assured of the same or similar duties as before the leave.

Duration

The child's best interests and its need for contact with and proximity to its parents are of the utmost importance. The duration of leave has a bearing on the ability of parents to return to work. The number of days' leave available for a child could be equally divided between the parents or be left unallocated, with the parents free to share it as they please. A certain amount of time should be specially reserved for fathers, so as to encourage them to take their share of parental benefit. It should not be transferable to the mother.

Cash benefits

A wider Convention, based on the responsibility of both parents for their children, should also address cash benefits. Since most working parents are dependent on their earnings, parental leave should be combinable with cash benefits.

Flexibility

To further facilitate the combination of gainful employment and family life, parents should be given the option of shorter working hours while their children are small. A wider Convention should also deal with leave of absence, paid or unpaid, for care of a sick child. In addition, fathers should be specially entitled to "paternity leave", i.e. time off work, simultaneously with the mother, in connection with childbirth, so as to be able to welcome and look after the new baby or to look after other children in the family when the new baby arrives.

Switzerland. Switzerland is currently unable to ratify Convention No. 103. A draft law regarding maternity insurance is currently being examined in Parliament.

Confederation of Swiss Employers (UPS): It is not surprising that Convention No. 103 was poorly ratified given its rigidity and the fact that the standards of protection are too high for an international instrument, notably a minimum of 12 weeks of leave. The ILO questionnaire appears to favour a further extension of protection, especially in the section regarding a Recommendation, which proposes a sharing of parental leave between the two employed parents. Only a flexible and far lighter instrument — at best a Recommendation — could have any chance of acceptance at the international level. All our responses to questions regarding the content of a possible Convention are given with a view to a possible new Recommendation. As for the questions relating to the content of a possible Recommendation, we will not enter into the discussion of these points. The extension of leave to 14 weeks, the remuneration of nursing breaks and the parental leave proposals are totally unrealistic, especially at the international level. Such questions should be settled between the social partners through collective agreements or at the enterprise level. The UPS does not support the preparation of any new international instrument aimed at extending benefits. The Swiss Association for Visual Communication (VISCOM) prefers not to enter into discussions regarding the revision. The Swiss Employers' Association for the Machine Industry (ASM) notes that solutions worked out between the social partners are clearly preferable to legal constraints imposed from the outside. If maternity protection really is considered a necessary condition for equality in employment, this objective (equality) would be better achieved by facilitating the professional integration of women — for example, by adjusting school schedules to fill the day — rather than by creating additional social benefits.

Federation of Swiss Salaried Employees' Associations (VSA): We support the intention to revise Convention No. 103 with a view to producing a broader, more open instrument which might be ratified by more countries. However, the basic protection afforded by the instrument should not be diluted. The revised Convention should contain certain ground rules regarding financial aspects, rather than off-loading these to the non-binding Recommendation. Protection of mothers and pregnant women at work is one of the most basic elements in the overall protection for employees.

South Africa. Business South Africa (BSA): Having children is making a choice in life and sacrifices are invariably necessary. Over time, it has become accepted that many of the sacrifices related to maternity protection and raising children in general have to be borne by the employer and by co-workers who have to stand in for those on maternity leave. The question of equity between employees with and without children should be addressed.

Trinidad and Tobago. The Government accepts and supports the objectives and principles of maternity protection, but it has not been able to ratify Convention No. 103. The recently adopted Maternity Protection Act, 1998, provides a first attempt at legislative support for maternity protection. It is hoped that future developments will enable full accord to be made with the existing Convention.

The large number of replies to the questionnaire reflects the importance of the subject-matter for member States as well as their interest in revised standards on maternity protection. The governments of 107 member States replied and there was an almost equal number of additional replies from employers' and workers' organizations. The general observations indicate the desirability and timeliness of revised standards on maternity protection which would take into account the increased participation of women in the labour market and the discrimination women still face in employment due to their reproductive role. Some also noted that there have been improvements in maternity protection in national law and in practice which were not envisaged in the Maternity Protection Convention (Revised), 1952 (No. 103). Many replies reflected the concern to make such protection more effective by taking account of new forms of financing maternity benefits.

As reported under questions (1) and (2), a vast majority favoured the adoption of a Convention supplemented by a Recommendation. A few governments and employers' and workers' organizations, however, opposed or questioned the necessity of adopting new standards on maternity protection. They cited various reasons: their economic situation was such that they would not be able to meet new obligations; their existing legislation was adequate in providing protection and benefits; or Convention No. 103 was still relevant and urged its wider ratification. One employers' organization stated that the new instrument should only take the form of a Recommendation.

Many replies emphasized that the new standards on maternity protection should be confined to broad principles and be flexible enough to accommodate different national situations and levels of development. They should lay down the basic rights for maternity protection, leaving the mechanisms for applying them to national law and collective bargaining. One government suggested specifically that the new instrument should follow the approach adopted in the Equal Remuneration Convention (No. 100) and the Discrimination (Employment and Occupation) Convention (No. 111) which require ratifying member States to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, maternity leave. One employers' organization specifically cautioned against the risk of creating new standards that will not be useful to countries which need them while being superfluous for others. From another perspective, one Member proposed a Convention in two parts to make wider ratification possible, leaving the option for countries to ratify only one part or both. Another Member considered that the focus of the new instruments should be rights-based rather than protection-based and as such should consider the use of a taxation-funded means tested benefit scheme which could equally or more efficiently deliver income support to those women who are in need of such support.

While there was wide support for new instruments which provide greater flexibility, some governments and employers' and workers' organizations underlined that the level of protection contained in certain provisions of Convention No. 103 retained their relevance and should not be changed or lowered.

A few replies, while acknowledging the need for maternity protection, expressed reservations about adopting overly protective standards which could result in further discrimination against women.

Although the points raised in these observations are addressed as appropriate under the relevant specific questions, it might be helpful to make a few general observations at the outset.

As drafted, the Proposed Conclusions retain the basic principles of maternity protection: the right to leave, the right to income replacement during leave (cash benefits), medical benefits, and employment protection. The main differences between Convention No. 103 and the Proposed Conclusions are highlighted below.

(a) Methods of application: Broader possibilities are provided with regard to the means of application in response to many replies from member States, many of whom indicated that this would enable wider ratification.

(b) Leave: While the minimum duration of leave is the same, provision is made for ratifying Members to undertake an obligation for a longer period *(Points 7(2)* and *(3))*. Regarding compulsory leave, the new proposed point does not specify the duration and distribution of such leave *(Point 8(1))*.

(c) Cash benefits: The Proposed Conclusions take account of the different approaches used in member States *(Point 9(3))*. While maintaining that cash benefits should be provided as specified in Convention No. 103, the Proposed Conclusions do not, however, specify how benefits should be paid nor who should be responsible for such payment.

(d) Employment protection and non-discrimination: Protection against dismissal is strengthened as the period is not only limited to maternity leave but also covers pregnancy and a period following a woman's return to work *(Point 11)*. A new proposed point was added to ensure that maternity does not result in discrimination in employment *(Point 12)*.

Taking account of the replies from many Members, the Office also proposed a simpler text for the scope of the instruments *(Point 6)*.

An issue raised in the Questionnaire (Question 28) and in the general observations was whether provisions in the new instruments on maternity protection would include provisions for parental leave. The Office notes that other types of leave such as parental, paternity and adoption leave are provided in several member States to assist parents in adapting to the arrival of a child and to allow them to find a better balance between family and work responsibilities. However, the Office has drafted the Proposed Conclusions from the point of view that the new proposed instruments would focus on protection for women during their pregnancy and recovery from childbirth, that is on child-bearing rather than on child-rearing. In addition, it takes account of the fact that parental leave is provided for in the Workers with Family Responsibilities Recommendation (No. 165), 1981.

I. Form of the international instrument or instruments

Qu. 1. *Should the International Labour Conference adopt a Convention revising the Maternity Protection Convention (Revised), 1952 (No. 103)?*

Total number of replies: 104.

Affirmative: 94. Algeria, Angola, Argentina, Australia, Austria, Bahrain, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Greece, Guyana, Honduras, India, Indonesia, Islamic Republic of Iran, Italy, Japan, Jordan, Kenya, Republic of Korea, Kuwait, Luxembourg, Malaysia, Mali, Mauritius, Mexico, Republic of Moldova, Morocco, Mozambique, Namibia, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, San Marino, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Negative: 3. Ecuador, Jamaica, Latvia.

Other: 7. Bulgaria, Costa Rica, Hungary, Lebanon, New Zealand, United Kingdom, United States.

Angola. Social and working conditions have changed since 1952.

Argentina. Since this is an area governed by an international Convention, the revision should be through an instrument of the same level.

Argentine Industrial Union (UIA): No. The subject is not suitable for an international Convention.

General Confederation of Labour (CGT): Yes. To ensure protection of the mother and provide job security.

Australia. Convention No. 103, which covers an important issue, has a very poor ratification record because it is too prescriptive in its current form. A more flexible, facilitative approach would allow member States to develop their own approach to maternity leave and would encourage ratification. The Convention needs to be updated in light of changing practices in many countries, where developments have outstripped some of the key concepts and principles underlying the 1952 revision. For example, women should have the right, but not be obliged, to take maternity leave. The preamble in the current instrument does not provide sufficient information regarding the purpose, goals or aims of the Convention. The major aim of the standard needs to be clarified in the preamble. If the main intent is to protect the mother, the instrument may be quite different to one which aims to protect the child. The new standard should not overlap with the Workers with Family Responsibilities Convention, 1981 (No. 156).

Austria. Federal Chamber of Labour (BAK): There should be no changes that would restrict national provisions.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Bahrain. Due to the increasing role of women, especially in industry and commerce, including administrative and banking activities.

Belgium. The current Convention is too detailed; general principles would be preferable.

Benin. Confederation of Independent Trade Union Organizations (COSI): Economic conditions have evolved over the past 40 years. It is time to adapt regulations to current conditions of work.

Brazil. A Convention should be adopted revising Convention No. 103.

National Confederation of Commerce (CNC): No. Convention No. 103 should be considered as the minimum standard. Any additions should be determined by way of collective bargaining.

National Confederation of Financial Institutions (CNF): Yes. Considering the numerous modifications required by the modern world.

National Confederation for Industry (CNI): No. Convention No. 103 should be considered as the minimum standard. Any "plus" should be obtained through collective bargaining.

Bulgaria. Ministry of Labour and Social Policy: Yes; Ministry of Health: No.

Cambodia. To be more realistic and flexible.

Canada. This Convention should be revised to reflect prevailing national law and practice, as well as the significant increase in the number of women in the workforce.

Canadian Employers' Council (CEC): No. It is more important to see to the ratification of Convention No. 103 by more countries.

Central African Republic. The questionnaire contains new and pertinent proposals which should contribute to the protection of women in their reproductive function.

Chile. Certain points need to be clarified, the instruments require greater flexibility and new forms have to be developed which prevent maternity protection from being a source of discrimination against women in employment. Atypical workers are often not covered by traditional protection.

Confederation of Production and Trade (CPC): No.

China. During the past half century, new and expanding industries have emerged continuously and the social labour areas in which women participated have broadened. Economic developments during this period in various countries have provided women with more effective protection. Convention No. 103 should be revised by integrating it with the practical experience of various countries and with the objectives of developments in the twenty-first century.

Colombia. In keeping with the changes resulting from the growing participation of women in the workforce.

Congo. With a view to improving the socio-professional situation of women.

Costa Rica. The International Labour Conference should adopt any instruments needed. Gaps or unclear provisions in Convention No. 103 should be revised with a view to protecting the rights of the weakest.

Denmark. An instrument should concentrate on the principle of non-discrimination of women and should explicitly include pregnant women. The need for protection from discrimination has increased as more and more women have entered the labour market and wish to maintain the attachment to the labour market after they have had children. The ban on discrimination during pregnancy and maternity is a natural part of the implementation of gender equality in the labour market.

Danish Employers' Confederation (DA): No.

Dominica. Dominica Amalgamated Workers Union (DAWU): Yes.

Dominica Trade Union (DTU): Yes.

Waterfront and Allied Workers Union (WAWU): Yes. Some of the previous provisions are antiquated.

Ecuador. It would not be wise to adopt another Convention establishing obligations which could be difficult to meet given the country's economic situation.

National Council of Women (CONAMU): Yes. To make provision for the greatest number of risk factors for women's health and maternity and to incorporate the provisions included in relevant ILO Conventions.

Ecuadorian Central Confederation of Class Organizations (CEDOC): The Convention should not be revised, particularly if the revision would imply any reductions in its provisions. The principles of Convention No. 103 were only recently implemented in Ecuador. Previously, only a few institutions and enterprises applied it as a result of collective bargaining.

General Union of Ecuadorian Workers (UGTE): Yes. Changes have occurred in the labour relations sphere which require up-to-date standards.

Ethiopia. As a necessary condition for equality in employment.

Confederation of Ethiopian Trade Unions (CETU): Yes. To strengthen the existing Convention.

Finland. To bring maternity protection to the present level of social development and knowledge of factors affecting the health of mother and child.

Confederation of Finnish Industry and Employers (TT), Employers' Confederation of Service Industries (LTK), Federation of Finnish Enterprises, and Commission for Local Authority Employers (KT): No. National legislation and practices and employment structure vary. Therefore a Convention is not a suitable instrument. A Recommendation would be sufficient.

Germany. BDA: Yes. A Convention limited to fundamental minimum standards that can be implemented throughout the world.

Ghana. The Convention should cover all private economic activities with legal implications clearly spelt out when breached.

National Council on Women and Development (NCWD): Yes. To take cognizance of modern developments, the Committee on the Elimination of Discrimination Against Women (CEDAW) and other relevant United Nations provisions.

Ghana Employers' Association (GEA): No.

Trades Union Congress (TUC): Yes. A revision should take current realities into consideration, i.e. the formal and informal sectors.

Honduras. In order to adapt and update Convention No. 103.

Honduran Enterprise Council (COHEP): If the revision involves improving the definition of concepts, expanding on and improving the wording.

Hungary. The provisions of the present Convention are up to date. Its present contents should not be modified, although certain elements could be extended to include parts which currently appear in the Recommendation.

India. The Convention should provide minimum standards in view of the various conditions existing in Member countries. It is essential to reduce unequal treatment of women in employment due to their reproductive role.

Indonesia. Indonesian Employers Association (APINDO): Yes. Some parts of articles do not apply in our situation.

Islamic Republic of Iran. Given the active presence of women in the labour force, revising Convention No. 103 is justifiable.

Iraq. General Federation of Trade Unions: Yes.

Jamaica. Jamaica Employers' Federation (JEF): Yes.

Japan. A Convention should be adopted in such a way that it allows the aims to be achieved while considering the individual situations of each Member.

NIKKEIREN: A revision proposal must be devised to make the content of both the existing Convention No. 103 and Recommendation No. 95 more realistic and flexible.

Republic of Korea. There are many countries which, owing to their national conditions such as poor social security systems, find it difficult to ratify Convention No. 103. It should be revised to make it more flexible, as far as it is relevant to the fundamental principle of maternity protection, and to promote ratification. An international labour standard is not an objective in itself, but should act as a means to promote human rights and quality of life. Compliance would require tripartite agreement and legislative changes, which take time and effort. It is desirable for the Convention to reflect different conditions as fully as possible. A more pragmatic approach is needed.

Lebanon. The purpose should be to reach new instruments which are sufficiently flexible to enable as many countries as possible to ratify them. The proposed provisions regarding both the scope of application and the length of leave could present difficulties for some countries. Despite the fact that a number of provisions in the new texts allow for options and thus for flexibility, basic obstacles remain.

Lithuania. Confederation of Lithuanian Entrepreneur Employers: Yes. The world is evolving. A fresh look is needed, along with new laws.

Confederation of Lithuanian Industrialists: Yes.

Centre of Lithuanian Trade Unions: Yes.

Lithuanian Labour Federation: Yes.

Lithuanian Workers' Union: Yes. Conditions of work must be improved and perfected because of progress in production.

Unification of Lithuanian Trade Unions: Yes.

Malaysia. The provisions should be general and flexible to enable more Members to ratify. The new Convention should also take into account economic developments and medical advancement.

Malaysian Employers Federation (MEF): Yes. Some of the provisions of the existing Convention are not in line with current needs.

Malaysian Trades Union Congress (MTUC): No. Convince countries to ratify the existing Convention and to regulate the Convention throughout.

Mali. It should be considered as one of the fundamental Conventions of the ILO.

Mauritius. Mauritius Employers' Federation (MEF): No.

Mexico. Given the impact of technological and social advances on working conditions and medical conditions relating to maternity care.

Morocco. The new Convention should be sufficiently flexible to encourage wider ratification. The Convention should promote gains achieved in the area of maternity protection and further develop them according to needs; reconcile the needs and requirements of women workers and the legitimate concerns of employers; and eliminate any discrimination that may arise from measures aimed at maternity protection.

New Zealand. The Government would support the revision of the Convention, so long as there is a genuine intent to provide a Convention that can be ratified by a significant number, if not the majority, of ILO member States. Instruments should be developed that provide general guidance and principles rather than imposing specific technical requirements. Such an approach would allow the maximum number of countries to abide by the intent of the instrument while retaining the flexibility for national laws and practices to determine the detail of applications of the principles concerned. Any standard must accommodate the diverse circumstances of member States. The starting point must be the question: *What is the outcome that the standard seeks to promote?* In this case, that desired outcome is adequate protection of the employment relationship of women/parents who have children and the assurance of an appropriate level of income and other forms of support during any period of maternity or parental leave. Such outcomes can be achieved in a number of ways (by the State, by the employer, by the employee, or by any combination of the above) and such diversity of approaches should not be precluded.

New Zealand Employers' Federation (NZEF): If Convention No. 103 is to be revised, it should provide guidance and principles rather than the sort of prescription contained in the current Conventions, which have deterred ratification.

New Zealand Council of Trade Unions (NZCTU): An up-to-date and relevant maternity protection Convention is pivotal to the implementation by member States of measures balancing work and family responsibilities. A Convention that is so flexible that maternity leave could be unpaid would weaken the Convention's value and impact.

Nicaragua. A new examination of maternity protection in the world of work is needed.

Niger. To adapt it to the current context.

Oman. So that the revised Convention may be in line with the achievements and victories realized by women in the fields of employment.

Pakistan. The proposed revised Convention could provide better treatment to female workers in respect of maternity protection.

Pakistan National Federation of Trade Unions (PNFTU): Yes.

Papua New Guinea. Due to the increasing number of employed women, legislation should be amended to include equal rights and the elimination of unfair employment practices.

Peru. The political, economic, technological and social changes the world has experienced during the past years make a new international instrument on maternity protection necessary, to bring it in line with the current world situation.

Philippines. The ILO should adopt a Convention to provide more relevant and responsive maternity benefits.

Portugal. The new Convention should encompass the principles recognized by many member States in the field of special measures for health protection and safety of pregnant women, and during periods of nursing, but should be flexible enough to enable ratification by a large number of States.

CCP: No. See General Observations.

Confederation of Portuguese Industry (CIP): It is not considered necessary to revise Convention No. 103, a text which is awaiting ratification by a significant number of ILO member States. In this area, there is a need for flexibility and realism in the standards adopted.

General Union of Workers (UGT): A Convention and a Recommendation should be adopted, especially as the previous instruments on maternity protection date back to 1952. At the Convention level, the minimum parameters are higher than in the previous version. Fundamental requirements relating to safety, health and hygiene at work, and the unquestionable value of maternity and paternity protection for those at work — values regarded as essential in any community based on sustainability and welfare — make it necessary to revise the legislative instruments.

Romania. Important changes have taken place in the area of international law, concerning the promotion of women's rights, the guarantee of equal opportunity between men and women, as well as the partnership principle in the fulfilment of family responsibilities (care and education of the child). It is timely to proceed with a revision of the Convention. The struggle against discrimination and inequality of opportunity between men and women constitute permanent objectives of international human rights organizations.

Confederation of Romanian Democratic Trade Unions (CSDR): No.

Russian Federation. Minimum thresholds should be laid down to enable ratifying States to implement it. Mention should be made of the fact that ratifying States may exceed the minimum thresholds in their national legislation in accordance with their economic possibilities.

Saudi Arabia. The said Convention has been in force for more than 40 years.

Slovakia. The draft Convention contains minimum standards; the provisions in the Slovak Republic concerning maternity protection are significantly more favourable.

South Africa. BSA: A new instrument should only be considered if it is less onerous than the previous instrument. The questionnaire seems to indicate that a new instrument will be written for sophisticated developed countries with established companies that are already globally competitive. Any new instrument should take due consideration of its impact on employment costs and, more particularly, on the cost of creating new jobs and its impact on small and medium-sized enterprises (SMEs) and the efforts of enterprises to become global players. Any new instrument which could have a detrimental effect on job creation, or could lead to covert discrimination against women of childbearing age, should be avoided.

Sri Lanka. To provide coverage to all the sectors of the economy and more flexibility.

Suriname. Association of Suriname Manufacturers (ASFA): This Convention provides specific protection and minimum standards for women workers.

Sweden. Both instruments are in need of revision and modernization.

Switzerland. UPS: No.

Trinidad and Tobago. If there is substantial support.

National Trade Union Centre (NATUC): Yes. Employers will not engage in such contemporary and humanitarian activities of their own accord.

Tunisia. Should be limited to fundamental principles.

Turkey. Confederation of Turkish Employers' Associations (TISK): The rapid process of change which is taking place in working life at the present time requires more flexible and dynamic provisions in the maternity protection field, as in all fields of industrial relations.

Confederation of Turkish Trade Unions (TÜRK-IŞ): Since 1952, the working conditions of women have changed and the Convention must be revised within the framework of present conditions.

United Kingdom. The United Kingdom supports a Convention setting minimum standards which strike a fair balance between ensuring the protection of the health and safety of pregnant employees and the need to maintain flexibility, competitiveness and employability.

United States. Yes, if the new instrument provides flexible guidelines for governments which more clearly reflect the rights of women to make choices in accordance with their individual needs. If the new Convention expands the role of governments in providing compulsory benefits across the board, then the United States would not recommend adoption of a revised Convention. Sex discrimination still remains a reality. Updating the provisions of Convention No. 103 to reflect global economic, social, legal and political changes, women's need for adequate maternity protection, and their right to equal treatment in the workplace would seem essential to the ILO's long-standing goal of enhancing the role of women in the workplace.

United States Council for International Business (USCIB): It is premature to determine the form of the instrument. Convention No. 103 needs to be revised because it has been ratified by just 36 countries. Thus, the ILO has not found the correct international baseline with respect to maternity protection at work.

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO): Yes. The existing Convention is minimal. Expansion of protections, rights and benefits for maternity and childbirth will enhance employment and economic security for working women and their families.

Viet Nam. A revision of this Convention will draw the Government's and industries' attention to female workers' issues. It should aim to meet the requirements of new situations.

Zimbabwe. Care should be taken not to make employing women counter-productive. Paternity leave should also be included.

Zimbabwe Congress of Trade Unions (ZCTU): Yes. To update it to provide full benefits and to revise the rest period.

If so, should the International Labour Conference also adopt a Recommendation supplementing the Convention revising Convention No. 103? **Qu. 2**

Total number of replies: 100.

Affirmative: 93. Algeria, Angola, Argentina, Australia, Austria, Bahrain, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Croatia, Cuba, Cyprus, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Greece, Guyana, Honduras, India, Indonesia, Islamic Republic of Iran, Italy, Japan, Jordan, Kenya, Republic of Korea, Kuwait, Luxembourg, Malaysia, Mali, Mauritius, Republic of Moldova, Morocco, Mozambique, Namibia, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, San Marino, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Negative: 3. Ecuador, Ghana, Mexico.

Other: 4. Costa Rica, Hungary, Lebanon, New Zealand.

Angola. To clarify certain aspects of the Convention.

Argentina. This would be appropriate for countries that have not adopted the Convention and would provide technical guidelines to help States develop their policies.
CGT: It is a useful means of modifying employment practices.
UIA: No. Only a Recommendation should be adopted.

Australia. A Recommendation could provide suggestions as to how a flexible, promotional Convention might be implemented, and address higher standards for those Members who want a higher goal than a minimum standard.

Austria. However, no less favourable conditions should result. Paragraph 4(1) of Recommendation No. 95 should be retained.
BAK: No changes that would restrict national provisions.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Belgium. It could lend precision to the general principles included in the Convention.

Benin. COSI: A Recommendation would provide guidance to countries.

Botswana. The revised instruments should also be in the form of a Convention supplemented by a Recommendation.

Brazil. It is important that the Convention be complemented by a Recommendation.
CNC: No. Only a Recommendation should be adopted in order to promote collective bargaining.
CNI: No. The adoption of a mere Recommendation fostering collective bargaining might be the way.

Cambodia. So that all member States, even those which have not ratified the Convention, can adapt to it.

Canada. A Recommendation can include more specific guidelines.

CEC: No. Implementation of Recommendation No. 95 should be emphasized, especially in developing countries.

Chile. Changes have to be made which, on the one hand, bring all of the amendments proposed for the Convention into harmony and, on the other hand, place the issue of maternity in a context of shared responsibility and establish pregnancy as a normal part of the course of women's lives and not as an illness. The Recommendation must complete the Convention.

China. Taking into account the uneven levels of maternity protection, the Recommendation should furnish countries with development objectives, so that maternity protection around the world could enter a new phase.

Colombia. To include all recommendations relating to maternity protection that it is not yet feasible to include in the Convention.

General Confederation of Democratic Workers (CGDT): Yes.

Congo. It would complete the revision of Convention No. 103.

Costa Rica. If there is a need to revise Convention No. 103, it would be appropriate to complement it with a Recommendation.

Czech Republic. ČMK OS: Yes.

Denmark. Equal Status Council: Yes.

Danish Confederation of Professional Association (AC): Yes.

DA: No. A Recommendation should generally be able to stand alone without ratification of a Convention.

Danish Federation of Public Servants' and Salaried Employees' Organizations (FTF): Yes.

Danish Confederation of Trade Unions (LO): Yes.

Dominica. DAWU: Yes.

DTU: Yes.

WAWU: Yes.

Ecuador. A protocol could be adopted to reform certain aspects of the Convention.

CONAMU: Yes.

UGTE: Yes. Legislation should be revised due to the new labour relations situation.

Estonia. Estonian Confederation of Employers and Industry: No.

Finland. KT: No.

Germany. BDA: Yes. Based on the principles of the Convention and focusing exclusively on essential areas.

Ghana. Recommendation No. 95 is quite adequate.

NCWD: Yes.

GEA: Yes.

TUC: Yes. A Recommendation should enhance the implementation of a new Convention.

Honduras. Necessary for achieving the Convention's objectives.

COHEP: A Recommendation clarifies the wording of the Convention and often expresses the real meaning of the Convention. Conditions of equality between employer and worker need to be established.

Hungary. Hungary does not oppose the adoption of a new Recommendation.

India. The Convention should be followed by a Recommendation to provide for more than minimum standards for countries who can afford to surpass the minimum.

All India Trade Union Congress (AITUC): Yes. Maternity protection should be given highest importance.

Indonesia. APINDO: No.

Islamic Republic of Iran. In light of technological developments, the increase in working hours and the need to ensure the health of mother and child, adopting a Recommendation to supplement the Convention is necessary.

Iraq. General Federation of Trade Unions: Yes.

Jamaica. JEF: Yes.

Japan. See Question 1.

Republic of Korea. A Recommendation should be adopted to serve as a basis for improving laws, regulations, and relevant systems of member States. Developing countries find it difficult to ratify the Convention because of their given circumstances. Some provisions of the Convention should be shifted to the Recommendation as future courses of action.

Lebanon. The Recommendation should guide the member States in developing legislation in accordance with their social and economic circumstances.

Lithuania. Confederation of Lithuanian Entrepreneurs/Employers: Yes.

Confederation of Lithuanian Industrialists: No.

Lithuanian Labour Federation: Yes.

Lithuanian Workers' Union: Yes. The Recommendation should contain more favourable provisions, such as longer duration of leave.

Unification of Lithuanian Trade Unions: Yes.

Malaysia. To provide guidelines and to avoid wide differences among the Members who ratify the Convention.

MEF: No. The Convention should be exhaustive.

Mauritius. MEF: No.

Mexico. A Recommendation independent of the Convention should be adopted, to include measures that serve as a guide to member States and to promote the gradual integration of its provisions into their legislation.

Mozambique. A Recommendation would establish general guidelines on maternity protection and would provide forms of cooperation between the social partners in the understanding and application of the provisions of the Convention.

New Zealand. The Recommendation should provide guidance on detail that allows the new Convention's provisions to be followed by as many countries as possible. If the Convention were unduly prescriptive, the New Zealand Government would support the adoption of a Recommendation only.

NZCTU: Yes, to support the Convention.

Nicaragua. The Recommendation is more flexible, which will facilitate its adoption by certain countries with very specific conditions.

Niger. A Recommendation would enrich and complement a Convention.

Oman. To cover those areas not covered by a binding text in the Convention.

Philippines. The Recommendation should provide member States with guidelines for applying the new Convention and should put forward the desired and needed improvements in maternity protection.

Portugal. The Recommendation should complement the Convention, integrating matters where the evolution of protection will be gradual and dependent on agreements. Examples include the increase in length of maternity leave beyond 12 weeks, its spread and extension, its financing and the protection of employment.

CIP: No.

UGT: See Question 1.

Russian Federation. A Recommendation should reflect the changes and additions to the revised Convention.

Slovakia. To harmonize with higher requirements suggested in the Convention.

Sri Lanka. For the purpose of implementation, guidelines are required based on the general principles of the Convention.

Sweden. See Question 1.

Switzerland. It was surprising to find that the financing of benefits was not included in the scope of the Convention. The Convention could include such a provision.

UPS: We are not in favour of the adoption of any instrument. However, the most acceptable solution would be a flexible and realistic Recommendation.

Syrian Arab Republic. To be applied should Convention be found confusing, and for implementation should ratification of the Convention not be realized, during drafting or amending of legislation.

Tunisia. Would contain details, as well as provisions likely to be obstacles to wide ratification.

Turkey. TISK: Recommendations provide guidance for member States in their legislative activities pertaining to working life. Detailed provisions which cannot be included within a Convention are included in Recommendations, thus adding depth to the Conventions and creating a basis for extending their provisions. In addition, the constructive role which a Recommendation may possibly play in the preparation and adoption of a Convention make it essential to adopt a Recommendation together with the Convention.

United Kingdom. The United Kingdom could support a Recommendation which provided guidance limited to implementing an acceptable Convention.

United States. Members will address maternity protection in accordance with their own customs, laws and needs of women workers. Given the need for a flexible Convention, a Recommendation can provide additional guidance to governments in establishing maternity protection benefits that best reflect those local situations.

USCIB: At a minimum, a Recommendation should be adopted.

AFL-CIO: The existing Recommendation is minimal. Expansion of protections, rights and benefits for maternity and childbirth will enhance employment and economic security for working women and their families.

Viet Nam. The Recommendation should be revised to suit the revised Convention.

Zimbabwe. A balance should be maintained between the interests of the employers and employees lest women become unemployable in the process.

ZCTU: To ensure proper implementation.

The vast majority of replies from governments, as well as from employers' and workers' organizations, favoured the adoption of a Convention revising the Maternity Protection Convention (Revised), 1952 (No. 103). A strong majority of replies supported the adoption of a Recommendation supplementing a revised Convention.

The prevailing view that emerged from the replies was that the Convention needed to be updated in light of changes that had occurred since 1952, most significantly, the tremendous increase in the number of women in the workforce. Concern was expressed for the struggle of women against discrimination in employment and against inequality of opportunity between men and women. A Convention was seen as necessary to ensure both health protection for mother and child, and job security.

The value of a Recommendation was attributed to its potential to assist countries in implementing the Convention. Several countries suggested that specific guidelines for application be provided in the Recommendation in order to clarify certain aspects of the Convention. These were considered especially helpful for developing countries.

A number of countries expressed the view that the new Convention should be sufficiently flexible to enable the widest possible ratification. Some governments and employers suggested that the Convention should provide general principles and guidance rather than impose detailed requirements. Several countries stated that the Convention should set minimum standards which strike a fair balance between the needs of women workers and the concerns of employers. A few replied that further obligations placed upon employers could result in increased discrimination against women. Other governments and workers' organizations favoured clearly defined legal obligations and cautioned that too much flexibility could weaken the value and impact of the Convention.

Some governments and workers' organizations stressed that the Recommendation should contain provisions that go beyond the minimum standards provided in the Convention to provide guidance to those countries that are able to strengthen protection further. Desirable provisions that would be difficult to ratify could be placed in the Recommendation. Also, the significance of a Recommendation for those Members who would not ratify a revised Convention was noted.

One government that opposed the revision expressed concern that its economic conditions were not conducive to assuming increased obligations under a new Convention. Some employers' and workers' organizations expressed satisfaction with the 1952 instrument and urged wider ratification.

Points 1 and *2* of the Proposed Conclusions have been drafted in accordance with the majority response.

II. Definitions and scope

Should the instruments apply to all employed women, provided that, in the case of a Convention, a Member may, after consulting the representative organizations of employers and workers concerned, exclude wholly or partly from its scope limited categories of employed women or of enterprises when its application to them would raise special problems of a substantial nature? **Qu. 3(1).**

Total number of replies: 105.

Affirmative: 89. Algeria, Angola, Argentina, Australia, Austria, Bahrain, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria, Cambodia, Cameroon, Canada, Central African Republic, Chile, China, Comoros, Costa Rica, Cyprus, Czech Republic, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Guyana, Honduras, Hungary, India, Indonesia, Italy, Jamaica, Japan, Kenya, Republic of Korea, Kuwait, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Republic of Moldova, Morocco, Mozambique, Namibia, Netherlands, New Zealand, Nicaragua, Niger, Norway, Oman, Pakistan, Papua New Guinea, Philippines, Poland, Portugal, Romania, Russian Federation, San Marino, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Negative: 8. Colombia, Croatia, Cuba, Ecuador, Jordan, Lebanon, Mexico, Peru.

Other: 8. Chad, Congo, Denmark, Greece, Islamic Republic of Iran, Latvia, Qatar, Togo.

Argentina. It should apply to all employed women except for special cases.

CGT: Yes. To all employed women without exception. Only partial exemptions, based on particular aspects of the work, would be acceptable.

UIA: Yes. Application to all women employees would not be a problem in a Recommendation.

Australia. There should be provision for exclusions in respect of employees to whom it would be difficult to extend the protections provided by the Convention. For example, casual or seasonal employment where work arrangements are informal, irregular and uncertain and the employee is able to refuse an offer of work on a particular day. Coverage is also inappropriate for those engaged under a contract of employment for a specified period of time or a specified task. Given the high proportion of female employees employed on a casual basis, it would be inappropriate to provide only for "limited" exemption. As a new point, the instruments should apply to all employed women who have served a prescribed minimum period of service with the employer, for example 12 months.

Australian Council of Trade Unions (ACTU): Yes, but only in extremely limited circumstances. Exclusion of categories, such as casual or part-time workers, workers with less than a specified period of service, or employees of small businesses, should not be permitted.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Bahrain. The two instruments concerned must apply to all women in employment, except in very limited exceptional cases to be determined by the State's competent authorities.

Barbados. The Convention should include working mothers and fathers, including self-employed workers who have made the required contributions to social insurance.

Belarus. Any possible exclusions of limited categories of employed women should be specified in the Convention itself.

Belgium. The Maternity Protection Convention is a basic instrument to which other Conventions refer. A restricted scope would therefore have indirect consequences on other

Conventions, so prudence should be exercised. Any permitted exceptions should be strictly interpreted and limited for reasons of non-discrimination.

CNT: The scope of the instrument(s) should be as wide as possible and exclusions as limited as possible. Exclusions should be based on serious, objective reasons and should not run counter to provisions accepted in other Conventions, notably the Part-time Work Convention, 1994 (No. 175), and the Home Work Convention, 1996 (No. 177).

Botswana. In order to build in flexibility.

Brazil. CNF: No. The standards should apply equally to all categories.

Cambodia. This would allow the instrument to be ratified by those with problems of a substantial nature.

Canada. The Convention should apply to all women, with as few exceptions as possible. However, ratification is likely to be difficult with respect to the coverage of agricultural workers, some homeworkers, some domestic workers, contract workers, and casual and temporary employees. The addition of the phrase "in accordance with national law and practice" may ensure enough flexibility to enable Canada to ratify.

Canadian Labour Congress (CLC): Yes. Given the concentration of women in agriculture, homework, domestic work, part-time and contingent work, exclusions should be allowed only in exceptional circumstances.

Chad. The instruments should apply to all employed women without exception.

Chile. The instruments must apply to all working women, with care being taken to ensure that the maternity protection standards contain clear instructions to avoid discrimination among women in employment.

China. This provision is consistent with conditions in developing countries.

Colombia. No working women should be excluded. The principle of the universality of social security should be applied.

CGDT: To "exclude wholly or partly from its scope limited categories of employed women or of enterprises" would infringe upon established rights and would encourage employers to adopt mechanisms which infringe the law.

Croatia. The Convention should be applied to all employed women, without the possibility of exclusions.

Croatian Association of Employers: Yes.

Cuba. The instruments to be adopted should apply to all women workers who have the status of wage-earners irrespective of the contract of employment, whether in the State, private or cooperative sector.

Cyprus. Initial exclusion of limited categories as stated in this question could be accepted only for reasons of flexibility.

Czech Republic. ČMK OS: The existing provision of Article 1, paragraph 5, of the Convention should be omitted.

Denmark. The Convention should have a broad scope to enable adoption by all trades. If the Convention is only to include a ban on discrimination on the basis of pregnancy and maternity, there should not be exclusions for certain categories of employed women.

FTF: The Convention should cover all employed women, but exclusions must be described in the report following ratification.

LO: The Convention should cover all employed women, but exclusions must be described in the report following ratification.

Dominica. Dominica Civil Service Association (CSA): Yes. This Convention should apply to all women without exception.

DAWU: It should apply to all employed women. In addition, homeworkers and informal sector workers should be considered.

DTU: Yes.

WAWU: Yes.

Ecuador. There should be no exceptions other than those which are insuperable. Consulting those involved is the best way of determining such exceptions.

CONAMU: Yes. To all women workers in all branches of economic activity which are recognized for the purposes of fixing wages, salaries and/or minimum rates.

National Federation of Chambers of Industry of Ecuador: The aim should be more flexibility and broader coverage and benefits.

UGTE: Yes. It should apply to all women without discrimination.

Egypt. In deference to the conditions and situations prevailing in each State.

El Salvador. These instruments should apply to all women who work, but should exclude categories of workers when application to them would raise special problems.

Estonia. Estonian Association of Trade Unions: Yes. Article 1 should take a more general form. From Convention No. 103, only (6) might be included in the new Convention.

Ethiopia. No exclusion.

Finland. Exclusion of certain categories is not desirable and should be avoided.

France. French Democratic Confederation of Labour (CFDT): Yes. Any exclusion should be due to insurmountable problems and should follow consultation with the social partners.

General Confederation of Labour — Force Ouvrière (CGT-FO): The Convention should apply without reservation to all employed women.

Germany. Limited exemptions for certain occupations are inevitable.

Ghana. All categories of women workers in every sector of the economy should be covered.

GEA: Yes, for ease in implementation.

TUC: Yes. Ways should be explored to make the Convention cover the informal sector.

Honduras. COHEP: Favourable conditions should be created for small and medium-sized enterprises. Gradual implementation of provisions should be possible.

India. AITUC: Yes. The Convention should apply to all employed women without exception.

Bharatiya Mazdoor Sangh (BMS): No. It should not apply to young adolescent mothers. Limited exclusions should be allowed as proposed.

Centre of Indian Trade Unions: No. All women workers must be covered, including part-timers, without exception.

National Front of Indian Trade Unions: If member States are committed to maternity protection as a condition of equality and non-discrimination, there is little scope to limit the categories of employed women or operative areas for any reason. Rather, member States should undertake in-depth study to provide coverage to unprotected areas.

Indonesia. APINDO: No.

Islamic Republic of Iran. Excluding some categories is unreasonable, especially considering that universal welfare is a major goal for the third millennium.

Iraq. General Federation of Trade Unions: Yes.

Italy. The maternity protection standards should apply to all workers in the private sector and state employees. Special supervision should be made of the reasons for the exclusion of any categories.

Jamaica. All women with no exceptions.

Japan. To provide flexible application that considers the national situation in each country.
JTUC-RENGO: All employed workers should be covered, regardless of sectors. The draft is too flexible in this sense. In particular, women workers, such as dispatched, home and contract workers, should be protected.

Jordan. Only employed women who are subject to labour law should be covered.
Amman Chamber of Industry: No. The Convention should apply to all employed women who are subject to labour law.
Federation of Jordanian Chambers of Commerce: Yes.
General Federation of Jordanian Trade Unions: Yes.

Republic of Korea. Exceptions and gradual application of the standards should be allowed considering the different situations among countries.

Latvia. All employed women without exception. Labour legislation is applied to all employees and employers, regardless of their status and ownership of the enterprise, when labour relations are based upon a labour agreement.

Lebanon. Categories of excluded workers and enterprises need not be specified in the instrument itself. Linking exclusions with special problems of a substantial nature is inappropriate, because such problems are difficult to define or reach consensus on, and the substantial or non-substantial nature of the problems may vary from one country to another

Lithuania. Confederation of Lithuanian Entrepreneurs/Employers: Yes. There should be no exceptions.
Lithuanian Workers' Union: Yes. All employed women without exception should be covered.

Malaysia. Exclusions of certain categories of employed women should be provided for.

Mali. Extend protection to all working women, including the self-employed who have regular earnings.

Mauritius. MEF: No.

Mexico. It should only apply to employed women, who provide a personal and subordinate service, subject to an employment relationship. Possible exceptions should be given in this subparagraph to accommodate national circumstances.

Morocco. Inclusion of other categories of women workers, such as those in the informal sector and self-employed women, may create difficulties. This problem may arise in countries that have social protection systems that only cover formal sector employees. It should be possible to exclude categories of workers not covered by national legislation to enable such countries to ratify the Convention.
Federation of Chambers of Commerce, Industry and Services (FCCIS): No.

Mozambique. It should apply to all women workers, with the exception of piecework or casual work.
Workers' Organization of Mozambique (OTM): The Convention should apply to all working women irrespective of their category.

Namibia. The informal sector should be covered.

Netherlands. The special circumstances of special groups should be taken into account. The possibility of making exceptions is also endorsed.

New Zealand. Member States should be allowed to delineate special reasons for exclusion. The prescribed categories should not be so prescriptive as to preclude exclusions based on qualifying conditions, for example.

NZEF: An attempt to specify which categories might be excluded would inhibit ratification. Countries should not be expected to remove exclusions which they find appropriate.

NZCTU: The Convention should extend to all employed women.

Nicaragua. No women or enterprises should be excluded.

Niger. The social problems of workers are almost the same for all employed women. The instruments should apply to all employed women.

Norway. The Convention should provide for the exclusion of certain categories of employees from the entire Convention or parts of it.

Oman. To allow Members to determine such matters via national legislation in consultation with employers' and workers' organizations.

Pakistan. Such a flexible provision would strengthen tripartite approach to maternity issues and also provide practical solutions to special problems of a substantial nature.

PNFTU: Yes. Except women designated or categorized as "employers" or executives of the enterprise.

Papua New Guinea. This is needed in recognition of the difficulties which small, private sector employers may have with compliance.

Peru. Exclusions will depend on the particular situation in each member State.

Single Confederation of Workers of Peru (CUT): A limited list of possible exceptions should be established, based on the type of work performed rather than on the category of enterprise.

Philippines. The Convention should extend flexibility to member States encountering special problems in its application. A Member should have the prerogative in determining coverage.

Portugal. The possibility of exclusions enables wider ratification. It is not desirable that exclusions be defined with regard to the number of women employed in the firm, which would endanger the protection of women employed in small firms.

CIP: Member States should have the option of excluding certain categories of workers or enterprises.

General Confederation of Portuguese Workers (CGTP): No.

UGT: There should not be any discrimination between female workers. What legitimacy is there for allowing derogations for categories of workers or sectors of activity when the specific features of the categories or sectors are unrelated to the purpose of maternity and/or paternity protection?

Qatar. Both instruments should apply to all employed women under legal employment relations.

Romania. Within the framework of collective agreements, employers and trade union organizations can include special arrangements applicable to limited categories of workers or enterprises, when these arrangements are required by certain special conditions of work.

San Marino. When there is a formal employment relationship.

Saudi Arabia. If such representative organizations exist.

Seychelles. All women should be covered, regardless of the nature of their employment.

Slovakia. Equal protection for all women without any exception.

South Africa. No discrimination must be allowed in terms of nature of work, organization and marital status. Consideration should be given to homeworkers and other forms of atypical employment. In principle, such women should also be covered by the proposed Convention.

BSA: Exceptions will be needed for SMEs and other sectors, such as agriculture, particularly when employers who provide housing cannot do so for the replacement staff.

Spain. Any possible exceptions should be listed in a separate declaration.

Galician Inter-Union Confederation (CIG): Yes. Article 1 should also include self-employed workers.

Sri Lanka. To eliminate discriminatory grounds of treatment of employed women and make application of the Convention flexible.

Suriname. ASFA: To take into account national economic and social circumstances.

Sweden. Exceptions for particular groups are undesirable and should be avoided. To promote ratification of the Convention, the possibility of limited exceptions might be provided, in which case these should be specified as per Question 3(2).

Switzerland. National legislation does not apply to agriculture, to homeworkers or to the public administration.

Union of Genevan Employers' Associations (UAPG): The scope should be limited to employed women and not extended to the self-employed.

VSA: Yes. However, exclusions must be strictly limited to groups for which implementation of the Convention would cause major difficulties.

Syrian Arab Republic. Providing that exceptions be limited to ensure a higher degree of protection for maternity at work.

Togo. The instruments should apply to all women employed in the modern sector and even those in flourishing, unstructured sectors which require regulation.

Tunisia. To assure broader protection.

Turkey. TISK: It is becoming important to include exceptions as far as possible in any Conventions which are adopted and to provide freedom of action for both labour and management with regard to employment relationships.

United Arab Emirates. It is important to give flexibility in the provisions of the Convention.

United Kingdom. The Convention should apply to all women employed by an employer since the rationale behind maternity provisions is the need to protect the health and safety of a pregnant woman and her child around the time of birth. It would be difficult to justify exemptions from health and safety measures, although these could be acceptable where States can justify them.

United States. The coverage should be construed broadly and the exemptions narrowly, so as to eliminate the continuation of any unlawful sex discrimination.

USCIB: The instrument should apply to all employed women with no provision for exclusions.

AFL-CIO: The Convention should be drafted and interpreted broadly, with a presumption of coverage. Any exclusion should be narrowly tailored in response to a specific identified substantial problem. Exclusions should not disproportionably impact groups of workers, e.g. low wage workers.

Uruguay. Our current system applies to all women workers.

Venezuela. There should be no form of discrimination against employed women nor any restrictions with regard to enterprises.

Viet Nam. The scope should be extended to gradually cover all categories of employed women.

Zimbabwe. ZCTU: Without exceptions.

The majority of governments, as well as employers' and workers' organizations, supported the principle of coverage for all employed women. Many viewed this point as fundamentally important. *Point 6(1)* of the Proposed Conclusions was drafted accordingly. This Point simplifies the scope provided in Article 1 of Convention No. 103 which limited the application of the Convention to "women employed in industrial undertakings and in non-industrial and agricultural occupations, including women wage earners working at home" and listed in extensive detail the types of undertakings, services and occupations included.

The majority of governments, as well as employers' and workers' organizations, also favoured permitting exclusions in situations in which application to limited categories of workers and enterprises would raise special problems of a substantial nature.

It was felt that allowing such exceptions would provide the necessary flexibility to enable member States to ratify the Convention, even when they were in the process of extending its application to all employed women. This provision was drafted as *Point 6(2)* of the Proposed Conclusions. One Member suggested that possible exceptions of limited categories be explicitly listed in the Convention itself, an approach similar to that taken in Article 7 of Convention No. 103.

Many replies stated that any exclusions should be strictly interpreted and limited to exceptional cases. Several replies suggested specifically providing coverage of workers at risk of exclusion, such as agricultural workers, domestic workers, contract workers, home workers, casual and temporary workers, and self-employed workers. However, others expressed great concern that specifically requiring coverage of such categories of workers or enterprises could impede ratification. In view of the fact that coverage, at least with respect to benefits, may depend to a large extent upon the economic situation in each member State, *Point 6(2)* reflects the flexibility necessary to enable countries to take account of their national situation, while *Point 6(1)* affirms the principle of application to all employed women.

The concern was raised by a number of countries that exclusions would result in unequal treatment among women in employment, with regard to both discrimination based on maternity and protection of safety and health. One government pointed out that any restriction of scope should be examined with reference to other Conventions that call for maternity protection for certain categories of women.

Qu. 3(2) *In the case of a Convention, should each Member which ratifies the Convention list, in its first report on the application of the Convention under article 22 of the Constitution of the ILO, the categories of employed women or of enterprises thus excluded and the reasons for their exclusion, and describe, in its subsequent reports, the measures taken with a view to progressively extending the provisions to these categories?*

Total number of replies: 102.

Affirmative: 99. Algeria, Angola, Argentina, Australia, Austria, Bahrain, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Guyana, Honduras, India, Indonesia, Islamic Republic of Iran, Italy, Jamaica, Japan, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Mexico, Republic of Moldova, Morocco, Mozambique, Namibia, Netherlands, New Zealand, Nicaragua, Niger, Norway, Oman, Pakistan, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Romania, San Marino, Saudi Arabia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Negative: 1. Slovakia.

Other: 2. Hungary, Seychelles.

Argentina. CGT: This is essential to ensure effective implementation of the Convention.
UIA: No. See 3(1).

Australia. With the understanding that new exclusions which may become necessary after the first report are not prohibited.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Belgium. Any permitted exclusions should gradually disappear.
CNT: The instrument(s) should be conceived so as to encourage member States to examine their progress to achieving the defined goals.

Benin. COSI: It would be useful in order to follow the application in each country.

Botswana. Progressive coverage of excluded categories will give member States which ratify the Convention opportunity to deal with special problems which prevent full coverage.

Brazil. CNF: No. There should be no exclusions but the same standards with varying degrees of application.

Cambodia. To help extend the application to other categories.

Canada. Exclusions should be reported with a view to eventual limitation and removal.
CEC: No.
CLC: Yes. If such exclusions must exist, governments must be accountable.

Chile. In so far as the effectiveness of the standards is secured.

CPC: No. At the time of ratification they should indicate that certain categories and enterprises are excluded.

China. The method of progressively extending coverage is consistent with the national conditions in developing countries.

Colombia. The reports should describe the measures taken to achieve the objectives and any restrictions encountered.

Comoros. To inform the ILO.

Congo. Keeping account of the level of industrial development of each country and of the nature of work prohibited to women for physical reasons.

Costa Rica. Member States should, in their first reports, indicate the categories that are thus excluded and show that measures are being taken to progressively extend the Convention to those categories. More information on this should be given in subsequent reports.

Czech Republic. ČMK OS: If point 5 of Article 1 is to be left in the revised Convention, then the proposed procedure is essential.

Denmark. FTF: Exclusions must be justified and this will render the individual countries' work to improve their support for the Convention visible.

LO: The description of measures should also state those conditions which prevent exempted groups of women or enterprises from being completely covered by the Convention.

Dominica. CSA: Yes.
DAWU: Yes.
DTU: Yes.
WAWU: Yes.

Ecuador. But the ILO must take each country's situation into account in requesting progressive extension.

CONAMU: States should seek to broaden the categories of women workers and enterprises covered, rather than to exclude them.

UGTE: No. No groups should be excluded.

Egypt. But the scope cannot easily be extended to categories, such as domestic and agricultural workers.

Finland. However, exclusion of any categories should be avoided in the first place.

TT and the Federation of Finnish Enterprises: No. Certain categories of women and of enterprises may be excluded permanently. There should be no obligation to describe the measures taken with a view to extending the provisions to these categories.

France. French Confederation of Christian Workers (CFTC): Yes. For greater transparency.

Germany. BDA: Yes, provided that "list, in its first report" be amended to "list in its reports" to ensure that exemptions are possible even after the first report in the event that "special problems of a substantial nature" come to light; and the obligation of "progressively extending the provisions" should apply only when the original reasons for the exemptions have ceased to apply.

Ghana. GEA: To enable the State to know which enterprises should benefit from the Convention and to assist those excluded to benefit from the Convention.

Honduras. COHEP: Yes. It would obviate the problem of denunciations resulting from inappropriate application of the Convention.

Hungary. The obligation of continuous reporting to ensure that exclusions are temporary in nature.

India. AITUC: No. No exceptions should be allowed.
Bharatiya Mazdoor Sangh: No. Some categories of women should be excluded from the scope of the Convention.
Centre of Indian Trade Unions: No. There should be no exclusion. See 3(1).
National Front of Indian Trade Unions: Member States should reconsider any exclusions and revise their decisions.

Islamic Republic of Iran. While considering the economic situation, the gradual extension of coverage is the main goal.

Iraq. General Federation of Trade Unions: Yes.

Jamaica. JEF: No.

Japan. JTUC-RENGO: No. See 3(1).

Jordan. Definitely.
General Federation of Jordanian Trade Unions: No.

Lithuania. Confederation of Lithuanian Industrialists: No.
Lithuanian Workers' Union: No. There should be none.

Malaysia. MEF: No. No explanation should be required.
MTUC: Yes. Any exclusion should not deprive women of their existing benefits.

Mozambique. OTM: No. The Convention should prohibit exclusions.

Namibia. Namibia Employers' Federation (NEF): Yes. Countries should list exclusions.

Netherlands. Netherlands Trade Union Confederation (FNV): Place emphasis on "the measures taken with a view to progressively extending the provisions to these categories".

New Zealand. A reporting regime should clearly identify the exclusions that member States currently apply. There should be no requirement for progressive application. Where any government has exclusions in place for specific reasons, there should be no requirement to move towards eliminating such exclusions, so long as the reasons are still valid.
NZEF: First reports should state exclusions but without any requirement to move towards their elimination.
NZCTU: The NZCTU agrees with the ILO definition proposed.

Nicaragua. Members will more easily be able to adapt the Convention to their own political, social and economic conditions.

Niger. In accordance with the ILO Constitution.

Norway. This rule will ensure that categories of employees which certain countries have excluded from the scope of the Convention are not forgotten.

Pakistan. This would enable those who ratify to make preparations for extending the provisions of the Convention to these categories.

Papua New Guinea. Maternity protection should be appropriate to national circumstances and move towards a broader coverage, regardless of sectors of activity or the type of worker.

Peru. The current mechanism provided for in Article 7 of Convention No. 103 would thus be replaced, without prejudice to the periodic reports of the Governing Body.
CUT: See Question 3(1).

Philippines. Such reports will lay down action plans for an enhancement of maternity benefits.

Portugal. This is a standard clause to ensure progressive extension.

Qatar. If the instrument allows exceptions.

Seychelles. See 3(1).

Slovakia. In order to guarantee the equal approach to all women.

South Africa. BSA: It should not be presupposed that all exclusions will be temporary.

Spain. This is the same as Article 7(4) of Convention No. 103.

Sri Lanka. To apply the Convention according to the national conditions.

Suriname. ASFA: To guarantee better protection for women.

Syrian Arab Republic. Provided that coverage is gradually extended to all categories.

Togo. Such a report would inform the ILO of the manner in which the Convention is being applied by each Member and of the measures foreseen to improve application in the future.

Tunisia. To permit ILO supervisory bodies to fulfil their mission and guarantee full respect of the Convention.

Turkey. TISK: To ensure appropriate monitoring and evaluation.

United Kingdom. An effective system of monitoring implementation and ensuring that exemptions are justifiable or lawful would be needed.

United States. To inform the ILO as to the ongoing global status of working women, and the respective rationales of the Members for their exclusion or inclusion of various categories of workers.

USCIB: No. There should be no exclusions.

AFL-CIO: Yes. The description of "measures taken" should include a timeline for action and also any actions taken to mitigate the effects of exclusions.

Venezuela. Where categories of women or enterprises are excluded.

Viet Nam. It would help policy-makers set up a comprehensive policy to provide maternity leave for all female workers.

Zimbabwe. ZCTU: Yes. To ensure proper monitoring and evaluation.

A strong majority of replies were in support of this provision, which would allow Members to list categories of workers or enterprises excluded in their first report on the application of the Convention under Article 22 of the Constitution of the ILO. It has been included as *Point 6(3)* of the Proposed Conclusions.

Point 6(3) differs from Article 7 of Convention No. 103 in that a Member is simply required to list any exclusions and the reasons for them in its first report on the application of the Convention rather than being required to make a formal declaration at the time of ratification. One reply proposed changing "first report" to "reports" thereby enabling Members to provide for the possibility of exclusions at a later date.

Many of the replies favoured the requirement to describe in subsequent reports the measures being taken to progressively extend coverage to all women. Allowing for progressive extension is provided in *Point 6(3)* as a way of accommodating countries whose economic circumstances would not allow them to provide coverage to all employed women immediately. However, a few replies, while in favour of reporting upon the categories excluded, were not in favour of a requirement that Members progressively extend coverage to excluded groups or categories. One government raised the question of how to ensure that exclusions would be limited to categories raising special problems of a substantial nature. The Office notes that similar provisions exist in a number of ILO Conventions and that the country would have to indicate in its reports under Article 22 the reasons for the exclusions, which would be reviewed by the Committee of Experts on the Application of Conventions and Recommendations. It is also noted that before any such exclusion can be made, consultation with the representative organizations of workers and employers would be necessary, as provided for under *Point 6(2)*.

Should the term "woman" to whom the instruments apply mean any female person, whether married or unmarried, and the term "child" mean any child whether born of marriage or not? **Qu. 4**

Total number of replies: 106.

Affirmative: 93. Algeria, Angola, Argentina, Australia, Austria, Bahrain, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Guyana, Honduras, India, Indonesia, Islamic Republic of Iran, Italy, Jamaica, Japan, Kenya, Republic of Korea, Latvia, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Mexico, Republic of Moldova, Mozambique, Namibia, Netherlands, New Zealand, Nicaragua, Niger, Norway, Oman, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, San Marino, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Tajikistan, Thailand, Togo, Trinidad and Tobago, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Negative: 8. Egypt, Jordan, Morocco, Papua New Guinea, Pakistan, Qatar, Syrian Arab Republic, Tunisia.

Other: 5. Greece, Hungary, Kuwait, Lebanon, Myanmar.

Algeria. If it means a woman who has her own social insurance.

Argentina. Adopted children should also be covered.

Australia. The instruments should apply to all female persons. To determine eligibility according to whether the woman is married or the child is born of married parents would constitute discrimination on the basis of marital status. We support the definition contained in Convention No. 103.

ACTU: Yes. "Child" should also include adopted children.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Bahrain. It would be preferable to specify "working woman".

Barbados. To structure the instrument differently would be discriminatory.

Belgium. To ensure non-discrimination on the basis of civil status. If such a definition is problematic within the Convention, it could be placed in the Recommendation.

Brazil. CNC: No.
CNF: Yes. In order to avoid discrimination.
CNI: No. Other factors should be taken into account in these definitions.

Cambodia. Every woman, married or not, has the duty to take care of her child.

Canada. "Woman" must apply to any female person regardless of her marital status. "Child" must apply to any child regardless of the circumstances of its birth.

CEC: Yes. Retain the definition in Convention No. 103, making more precise the employed status of the woman rather than referring to woman in general. Include the notion of the adopted child.

Central African Republic. This term should be restricted with regard to single mothers.

Chile. With regard to the principle of equality before the law and of no arbitrary discrimination.

CPC: Yes.

Colombia. CGDT: Yes.

Comoros. A wide definition of "woman" and "child" would eliminate certain national restrictions which hinder maternity protection.

Congo. There must be no discrimination in this regard.

Denmark. FTF: A new Convention should also include men's right to leave.

LO: A new Convention should also include men's right to leave and men's reproductive ability should also be protected.

Dominica. CSA: Yes. With the increase in single-parent families, all child-bearing females and children from both inside and outside of marriage should be included.

DAWU: Yes.

DTU: Yes.

WAWU: Yes.

Ecuador. The term "woman" should apply to any person of the female gender, irrespective of colour, religion, social status, political conviction, etc., or marital status. The term "child" must apply to children of both sexes, whether born of marriage or not.

CONAMU: "Woman" should mean any person of the female sex, irrespective of her civil status, and the term "child" should mean the son or daughter of women workers.

UGTE: Yes. Maternal responsibilities transcend the legal status of the mother and child.

Egypt. "Woman" should mean a woman officially registered and legally recognized as married; and "child", a child born of a legal marriage.

Estonia. Estonian Association of Trade Unions: Yes. A woman's marital status is not important.

Ethiopia. The definition should indicate that the instrument refers only to women workers.

Finland. There is no acceptable reason to place women or children in a different position on the ground of family relations in matters concerning maternity protection.

France. CFTC: Yes. Definitions should be as wide as possible to take into account all situations.

Ghana. All categories of female persons and every child, whether born to married couples or not, should be covered.

GEA: Yes. Any female person, whether married or not, needs equal protection from the law.

TUC: Yes. The health of the woman and child is what matters, not their status.

Greece. The term "child" should mean any child, whether natural or adopted.

Guyana. The birth of children to unmarried parents is widespread.

Hungary. The definition contained in Convention No. 103 should be maintained.

India. AITUC: Yes. There should be no discrimination on the basis of civil or marital status.

Bharatiya Mazdoor Sangh: Only married women should be covered by this instrument. Unmarried women getting pregnant should not get the benefits of this instrument.

Indian National Trade Union Congress (INTUC): Yes. As today lifestyles have changed, there are single mothers.

Indonesia. "Woman" and "child" as defined in Article 2 of Convention No. 103.

APINDO: Yes.

Islamic Republic of Iran. In social security law, the term "insured women" is applied to all employed women, whether married or unmarried.

Iraq. General Federation of Trade Unions: Yes.

Jordan. "Woman" should only mean a female married person; and "child", a child born of marriage.

Amman Chamber of Industry: No. Only married female persons and children born of marriage should be protected, in deference to our traditions.

Federation of Jordanian Chambers of Commerce: "Child" should only mean a child born of marriage.

General Federation of Jordanian Trade Unions: Yes.

Kuwait. "Woman" should include a defined age or age group. "Child" should mean a child born of marriage.

Lebanon. "Woman" should mean any female person, whether married or unmarried. However, whether foreign women workers or children born out of wedlock are included should be left to Members to determine.

Malaysia. MEF: No. To specifically mention "whether married or unmarried" or "born of marriage or not" would encourage immorality.

Mali. Age limits should be determined for girls and women.

Morocco. "Woman" should mean a married woman and "child", a child born in wedlock.

FCCIS: Refer to national legislation.

Democratic Confederation of Labour (CDT): Yes.

Myanmar. In Myanmar, the maternity leave rules apply to any employed mother working in public services.

New Zealand. The Government agrees with the provision of universal coverage, as long as Members may put in place exclusions when they deem it appropriate.

NZCTU: Yes.

Niger. Retain the generic term woman, without distinction according to civil status.

Oman. To extend benefits and cover all categories.

Pakistan. Such provision would be construed as encouraging birth of children outside of wedlock, which is against many cultures and religions.

PNFTU: In Islam, a child born to an unmarried woman is "illegitimate". Such a woman should not be entitled to the benefits of the Convention.

Papua New Guinea. Under national law, a woman worker must be at least 16 years old.

Peru. Marital status is irrelevant to the present Convention.

Philippines. Marriage should not be a prerequisite to maternity protection.

Portugal. Differences in treatment according to civil status would constitute discrimination. Values to be protected through maternity leave should not be dependent on the fact that a woman is married or that a child is born to people that are or are not married.

UGT: Any discrimination against pregnant women on the grounds of their civil status is intolerable or between children born within or outside wedlock.

Qatar. "Woman" should mean "a working married woman".

Romania. The meaning of the term "child" should include "and every child for whom an employed person is responsible, including through custody, family placement and adoption".

Saudi Arabia. Because "protection" involves only the pregnant woman and the child.

South Africa. No discrimination on the basis of marital status should be allowed.

BSA: Yes.

Spain. These terms should not be questioned; they constitute an achievement reached in earlier Conventions. Maternity protection should not be restricted by such considerations.

CIG: No. The wording contained in Convention No. 103 is more specific.

Suriname. ASFA: In line with the principle of non-discrimination with respect to all women workers and children.

Sweden. The new instruments should promote the common responsibility of parents for their children and, accordingly, should also include fathers and parents of adopted children. Parents' rights can be defined in a separate second part of the Convention, for separate approval. See General Observations.

Syrian Arab Republic. The law provides protection for legitimate marriages and to permanent contracts of employment in both public and private sectors. The child is protected by the Convention on the Rights of the Child.

Trinidad and Tobago. NATUC: Yes. All women, whether they are married or not, experience similar discrimination from employers when they are pregnant. All children are born equal and have equal rights.

Tunisia. "Woman" should mean any married female person, and "child" should mean any child born of marriage.

Turkey. Age limits for each category may be appropriate for precision.

TISK: The purpose of the Convention is to protect married or single women and children born in and outside marriage.

United Arab Emirates. Yes for the term "woman"; for "child", there are legal problems for a woman who bears a child without legal marriage.

United Kingdom. The main concern should be to protect the health and safety of the mother and child, regardless of their status.

United States. Whether a pregnant woman is married or unmarried should not be a consideration as to whether she should receive protections to safeguard her health or that of her child. Any woman who is working is providing for the security of herself or her family. To risk her health is to risk that economic security. A child remains a child with essential minimum health and safety needs regardless of the marital status of his or her biological parents, so the Convention should not make a distinction on this basis.

Viet Nam. It is a question of the rights of women and children. The Convention should not discriminate against any female worker or any child.

Zimbabwe. ZCTU: The Convention is for all women.

A very strong majority of replies from governments, employers' and workers' organizations affirmed that "woman" should mean "any female person, whether married or unmarried", and "child" should mean "any child whether born of marriage or not". Several replies proposed enumerating a list of prohibited grounds of discrimination as in Article 2 of Convention No. 103 which specifies "age, nationality, race, or creed" as grounds upon which no distinction can be made. The new provision, which is drafted as *Point 5* of the Proposed Conclusions does not substantively alter the definition contained in Article 2 of Convention No. 103 and the reference to civil status was to avoid any ambiguity concerning the civil status of the woman or child. As drafted, the definition applies in the broadest sense to "any female person," and any other distinctions would be implicitly prohibited.

The value of ensuring the health of all women workers and their children, without any discrimination based on civil status, was emphasized strongly in many replies. However, a significant number of those who objected to the proposed definition stated that the terms "woman" and "child" should mean only married women and children born of marriage in accordance with the laws and beliefs in those countries. Limiting the definition according to civil status would be inconsistent with the established approach first taken in the Maternity Protection Convention, 1919 (No. 3), where the term "woman" signifies "any female ... whether married or unmarried," and the term "child" signifies "any child whether legitimate or illegitimate" and maintained in Convention No. 103 with very similar wording. It should be noted that the definition of "child" in the United Nations Convention on the Rights of the Child makes no distinction according to civil status. *Point 5* as drafted emphasizes the principle, supported strongly in the replies, that where the health and safety of an employed woman and her child are at issue, civil status should not be considered.

A few replies suggested that the term defined be "working woman" and one suggested that "child" should mean the son or daughter of a working woman. The Office notes that *Point 6* of the Proposed Conclusions, relating to scope, states that "The Convention should apply to all employed women."

Some replies proposed that the definition of "child" should include adopted children, as is the case in some national legislation. The Office notes that the inclusion of adopted children would broaden the scope of the Convention, which provides maternity protection for employed women with regard to childbearing, rather than child rearing.

Other replies raised questions regarding the coverage of workers who had not accrued a minimum number of hours of work or period of service, who were not citizens, or who had not reached a certain age. These questions usually arise in conjunction with qualifying conditions for cash and medical benefits normally prescribed in national legislation which are discussed in the commentary under Questions 8 and 9(1).

III. Content of a Convention

MATERNITY LEAVE

Qu. 5(1) *Should a woman to whom the Convention applies, on production of a medical certificate stating the presumed date of her confinement, be entitled to a period of maternity leave of not less than 12 weeks?*

Total number of replies: 105.

Affirmative: 93. Algeria, Angola, Argentina, Australia, Austria, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Guyana, Honduras, Hungary, India, Indonesia, Islamic Republic of Iran, Italy, Jamaica, Japan, Kuwait, Latvia, Lithuania, Luxembourg, Mali, Mauritius, Mexico, Republic of Moldova, Morocco, Mozambique, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Norway, Pakistan, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, San Marino, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Kingdom, United States, Uruguay, Venezuela, Viet Nam.

Negative: 6. Bahrain, Jordan, Republic of Korea, Malaysia, Oman, United Arab Emirates.

Other: 6. Congo, Kenya, Lebanon, New Zealand, Saudi Arabia, Zimbabwe.

Algeria. It would be advisable to foresee a progressive approach given the problems that certain countries might face, especially developing countries.

Argentina. CGT: Encouragement should be given to extending this period to 16 weeks.

Australia. This provision should apply in accordance with the exclusions provided in Question 3(1).

Austria. The prospective mother should be entitled to be excluded entirely from work, both before and after confinement (i.e. employment should be declared inadmissible during this period). The term "leave" could be replaced by "maternity release from work".

Austrian Confederation of Trade Unions (ÖGB): Yes. Recommendation No. 95 specifies a period of 14 weeks and this should be incorporated in the Convention and made binding.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Bahrain. The leave determined above is too long. It should be left to the determination of the laws of every Member.

Barbados. Existing legal position.

Belgium. As an absolute minimum.

CNT: A provision which encourages those countries which currently provide less than the 12-week minimum to progressively extend leave to 12 weeks could improve the situation.

Botswana. Minimum of 12 weeks is reasonable.

Cambodia. This is the minimum required for recuperation following childbirth.

Cameroon. Leave should be provided before and after confinement.

Canada. CLC: Yes. Twelve weeks would be an absolute minimum. The period recommended in a revised ILO Convention should be raised to 18 weeks.

Chile. A medical certificate or a document issued by any other legally competent professional.

Comoros. As a strict minimum.

Congo. It is desirable that this duration be extended to 15 weeks to permit the employed woman to take care of her child until the age of three months.

Costa Rica. Twelve weeks of maternity leave is a minimum safeguard which should be available to every pregnant woman.

Croatia. The entitlement to maternity leave should be not less than 16 weeks. One reason for revising the Convention should be the extension of the maternity leave period.

Cyprus. A period of 14 weeks could also be envisaged in view of the clear trend for extension of leave beyond 12 weeks.

Czech Republic. ČMK OS: The minimum duration of maternity leave should be raised to more than the 12 weeks so far guaranteed by Convention No. 103.

Denmark. LO: The possibility of extending the period of maternity beyond 12 weeks should be examined.

Dominica. CSA: Yes.

DAWU: Yes.

DTU: Yes.

WAWU: Yes. Not only should this provision apply to women, but to her spouse or partner. Extra help is needed to receive the child.

Ecuador. The medical certificate is essential, in that it indicates that both the mother and the child are under specialist supervision. Twelve weeks are adequate.

CONAMU: Yes. The ILO should establish supervisory mechanisms to ensure this right is respected, with employers incurring a fine as a penalty for non-respect. The period of maternity leave should be independent of holidays to ensure that the employer cannot reduce the maternity leave if the confinement occurs during holiday leave.

National Federation of Chambers of Industry of Ecuador: The main requirement that a medical certificate confirming the state of pregnancy and the approximate date of birth be issued should be maintained.

UGTE: No. The woman should have the right to the 14 weeks' leave, even if confinement occurs earlier than the presumed date. In the event of miscarriage, the woman should be entitled to at least two weeks' compulsory leave.

El Salvador. This is a practical time period.

Estonia. The period of maternity leave should be not less than 14 weeks.

Estonian Confederation of Employers and Industry: Yes.

Estonian Association of Trade Unions: Yes. Maternity leave should be not less than 14 weeks as provided by the EC Social Charter.

Finland. TT, LTK and Federation of Finnish Enterprises: A Convention should not be adopted. The 12-week period could be included in a Recommendation.

Central Organization of Finnish Trade Unions (SAK), Finnish Confederation of Salaried Employees (STTK) and Confederation of Unions for Academic Professions (AKAVA): The possibility of extending the leave to 16 weeks should be seriously considered.

France. National Council of French Employers (CNPF): No. Set a shorter minimum duration.

CFDT: Yes. To avoid pre- and postnatal illness and to strengthen mother-child relations to prevent mistreatment.

CFTC: Yes. The absolute minimum.

Ghana. NCWD: Yes. If the child is declared medically unwell, the mother must be allowed time off. Ideally, provision should be made for extra time off until the child is 1 year old and the mother should not suffer penalties for absenteeism or loss of job.

GEA: Yes. 12 weeks should be the minimum period for confinement.

TUC: Yes. The current 12 weeks need to be improved in view of the emphasis on breastfeeding for six months.

India. AITUC: No. In order to facilitate breast feeding for the first six months that are considered crucial for a child's growth, six months' minimum maternity leave should be allowed to working women.

Hind Mazdoor Sabha (HMS): Yes. In rural areas in India, children are delivered at home by a midwife. In such instances, production of a medical certificate cannot be a hard and fast rule. A woman should enjoy protection by the mere fact that she is pregnant and that the employer has learned of it regardless of the means.

Iraq. General Federation of Trade Unions: Yes.

Japan. JTUC-RENGO: A woman should not necessarily have to submit a medical certificate.

Jordan. General Federation of Jordanian Trade Unions: Yes.

Kenya. Members ratifying the Convention should be free to set leave for a minimum period of ten weeks, for example.

Republic of Korea. Admitting that a 12 week-long maternity leave should be provided to meet the principle of maternity protection, the varying traditions and conditions among member States should be fully considered. A more flexible standard should allow countries, which are trying to realize the ideal of the Convention in the face of restrictions caused by their real situations, to ratify the Convention. It is much more important to promote ratifications and stimulate technical discussions on application of the standard than to maintain rigid standards thereby keeping member States away from the Convention.

Federation of Korean Trade Unions (FKTU): Yes.

Lebanon. A minimum of 12 weeks' maternity leave, as stipulated in Convention No. 103, may be one of the reasons that prevented ratification by many countries. It might be advisable for the new instrument to allow for shorter leave periods on economic or financial grounds when member States deem that their economic and financial circumstances demand it. The length of this leave lies at the centre of the proposed instruments and affects practically all their provisions.

Lithuania. Confederation of Lithuanian Entrepreneurs/Employers: Yes. 12 weeks is the bare minimum. In developed countries, the leave is much longer.

Malaysia. Twelve weeks' maternity leave is too long and would discourage employers from employing women.

MEF: No. Some countries provide less than 12 weeks and entitlement should remain at the existing level.

MTUC: Yes.

Mauritius. MEF: Yes. For developing countries, 12 weeks is adequate.

Mexico. This duration could be excessive in some countries.

Mozambique. The period of leave should be determined by national legislation and in accordance with the objective conditions of each country, with the Convention establishing the minimum.

Namibia. NEF: Yes. Twelve weeks is the minimum period, if there are no complications.

National Union of Namibian Workers (NUNW): Yes. But taking into consideration complications which might arise at any time.

Netherlands. FNV: The wording "at least 12 weeks" [as in Article 3(2) of Convention No. 103] is preferable to "not less than 12 weeks". Article 3(4) of Convention No. 103 should be retained in the new Convention.

New Zealand. It is more appropriate to provide for a period of parental leave. The requirement of a medical certificate may be a barrier where prenatal care and attendance at birth may be provided by a medical professional who is not able to issue a medical certificate, e.g. midwives. The form of certification should be determined according to national laws and practice.

NZCTU: Some form of certification consistent with national law and practice should be provided by a woman before she is entitled to take 12 weeks' leave.

Oman. Maternity leave must not exceed the limit that would affect the economy and paralyse production forces. Maternity leave for 45 days is reasonable.

Peru. CUT: The possibility of extending the leave period in accordance with national circumstances can be left to collective bargaining.

Philippines. A maximum of eight weeks' maternity leave as practised in our country is deemed sufficient.

Qatar. Provided that this period includes a paid leave of not less than one month from the date of confinement. There should be exceptions as regards duration and distribution of the maternity leave.

Romania. Maternity leave should be increased to 18 weeks.

Saudi Arabia. The period of maternity leave depends on national legislation.

Slovakia. As the legislative minimum.

South Africa. The entitlement should be unconditional, irrespective of whether or not they produce a medical certificate.

BSA: The 12-week period is in line with South African legislation. However, a 12-week period may not be feasible in all countries.

Sweden. A prescribed minimum period with the possibility of extension may be a suitable construction.

Switzerland. UPS: No. A 12-week period is too rigid for an international instrument.

ASM: Maternity leave should be settled by the social partners, not by the law.

VSA: Yes. A minimum leave period of 14 weeks would be preferable and an improvement on the existing provision of Convention No. 103, although this could discourage countries from ratifying the new revised Convention.

Syrian Arab Republic. The Convention should provide that maternity leave be granted at the beginning of the ninth month of pregnancy.

Turkey. TÜRK-IŞ: According to European standards, it should be increased to 16 weeks.

United Kingdom. This is the minimum period essential to guarantee the health and welfare of the mother and child at around the time of the birth. The United Kingdom could accept 14 weeks.

United States. As long as the entitlement is flexible to meet the pregnant woman's needs and not a fixed, compulsory period.

USCIB: No. The need for maternity leave should be a medical determination made by the woman and her doctor. Because medical leave needs will vary among women depending on their health circumstances, and in most instances will be less than 12 weeks, any leave specified by law should be part of a family and medical leave law covering a variety of maternity, parental, family and related circumstances.

Venezuela. Venezuelan Workers' Confederation (CTV): This should be the minimum period. A longer period should be granted if necessary according to medical opinion.

Viet Nam. It is the minimum duration to protect the health of mother and child.

Zimbabwe. Preferably not less than 14 weeks.

ZCTU: Yes.

Qu. 5(2) *Should a Member which ratifies the Convention examine periodically, in consultation with the most representative organizations of employers and workers, the possibility of extending, as appropriate, the period of maternity leave referred to above?*

Total number of replies: 103.

Affirmative: 78. Algeria, Angola, Australia, Austria, Barbados, Belarus, Belgium, Benin, Botswana, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Croatia, Cuba, Cyprus, Czech Republic, El Salvador, Estonia, Ethiopia, Finland, Germany, Ghana, Greece, Guyana, Honduras, India, Indonesia, Islamic Republic of Iran, Italy, Jamaica, Japan, Kenya, Republic of Korea, Kuwait, Latvia, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Republic of Moldova, Morocco, Mozambique, Netherlands, New Zealand, Nicaragua, Niger, Norway, Pakistan, Papua New Guinea, Peru, Philippines, Qatar, Romania, Russian Federation, San Marino, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Thailand, Trinidad and Tobago, Turkey, Ukraine, United Arab Emirates, United States, Uruguay, Venezuela, Viet Nam.

Negative: 13. Argentina, Bahrain, Brazil, Ecuador, Egypt, France, Jordan, Namibia, Oman, Switzerland, Syrian Arab Republic, Tajikistan, Tunisia.

Other: 12. Bulgaria, Costa Rica, Denmark, Hungary, Lebanon, Mexico, Portugal, Saudi Arabia, Seychelles, Togo, United Kingdom, Zimbabwe.

Argentina. Unnecessary. In cases of illness of the mother or child, the appropriate type of leave could be used.

CGT: See 5(1).

Austria. Unless a considerably longer period is already laid down by law.

ÖGB: Maternity leave could, in principle, be extended to at least 16 weeks. This should be stipulated in the Recommendation.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Belgium. The increase in leave should not negatively affect equality of treatment. Rather than granting too long a leave to the woman, parental leave could be provided for either parent.

CNT: Extensive maternity leave may compromise women's reintegration into the labour market. Setting a maximum duration for maternity leave is justified because the cash benefits provided during long leave periods are generally insufficient to achieve the protection intended in the ILO instruments.

Botswana. This will allow for flexibility in the revision of the period for maternity leave.

Brazil.

CNF: Yes. With account being taken of the special situation of each Member.

CNC and CNI: Any alteration of the minimum standard should be the result of collective bargaining.

Bulgaria. Ministry of Labour and Social Policy: Yes; Ministry of Health: No.

Canada. The Convention should require consultations on possible legislative amendments.

CEC: No. This point is superfluous within the framework of a Convention.

CLC: Yes.

Central African Republic. Taking into account the social realities of each country.

Chile. This may not necessarily involve a reform of legislation, but may be the subject of an agreement between the parties. Due consideration should be given to the principle of joint family responsibilities, as contained in Convention No. 156.

CPC: No. The stability of the standard is essential in the labour market.

Colombia. This point must be freely decided by each Member ratifying the Convention.

Congo. In accordance with national laws and regulations and the level of development of the infant care facilities that exist in each country.

Costa Rica. The length of maternity leave should be specified by national legislation, which should also allow the possibility of consultations with the most representative employers' and workers' organizations regarding the possibility of extending it.

Cyprus. Tripartite consultations are an effective means of taking into account national conditions in fixing the period of leave.

Denmark. It would be very demanding if Members regularly had to examine the possible extension of maternity leave and report this to the ILO.

DA: Reporting should not be required.

Equal Status Council, FTF and LO: The results of the examinations should appear in the national reports.

Dominica. CSA: Yes.

DAWU: The word "periodically" needs to be more specific.

DTU: Yes.

WAWU: Yes.

Ecuador. Only when the country has experienced internal and external changes which justify such a modification.

CONAMU: Yes. Periodic examination is essential to extend the length of the leave. Consultations should include male and female workers.

National Federation of Chambers of Industry of Ecuador: It is not advisable to create expectations which could result in pressure on governments and employers.

CEDOC: Yes.

UGTE: Yes. This periodic revision is necessary in view of the economic and social changes taking place in each country.

Egypt. Excessive maternity concerns might refrain employers from engaging women. The period of maternity leave must be determined by law.

Egyptian Trade Union Federation: Yes. The possibility of extending the period of maternity leave would not be compulsory but be applied, as appropriate, to avoid any discrimination in the employment of women.

Estonia. If there is a possibility of extending the period of maternity leave.

Ethiopia. To be considered in line with the country's socio-economic development. The consultation should also consider the option of reducing the period of the maternity leave when the situation demands.

Finland. Yes, when due to new scientific knowledge or social developments, there is reason to reassess the length of leave. The length of leave must not become a factor of discrimination against women.

TT, LTK, Federation of Finnish Enterprises and KT: No.

France. CNPF: No. To be set by member States.

CFDT: Yes.

French Confederation of Executive Staffs (CFE-CGC): Yes.

CFTC: Yes. Supplementary weeks of postnatal leave should be encouraged.

CGT-FO: Yes.

Germany. BDA: No. There should be no such obligation to carry out regular examinations.

Ghana. The period of maternity leave should be extended as when necessary.

TUC: Yes. Family support systems are vanishing, thus it is imperative that consultations be held periodically to consider extending the maternity leave.

Honduras. COHEP: No. The consultation should take place within the framework of collective agreements.

Hungary. Member States, where the maternity leave is already more than 12 weeks, should not be subject to such obligation.

India. AITUC: Yes. This is considered necessary in order to affect periodic improvements in maternity protection.

Bharatiya Mazdoor Sangh: Yes. Member States should be free to extend maternity leave beyond that prescribed by the Convention to suit each country's needs and capacity.

National Front of Indian Trade Unions: Work situations vary from sector to sector. Leave should be extended to 17 weeks, subject to the country's economy. Such benefits should be restricted to two children to check the population explosion in developing countries.

Indonesia. Maternity leave can be extended as appropriate to be determined by the competent authority according to the health of the women concerned.

Islamic Republic of Iran. If such extension has been provided in the Convention.

Iraq. General Federation of Trade Unions: Yes.

Italy. CONFINDUSTRIA: Should be handled through collective bargaining or national legislation.

Jamaica. JEF: Yes, if the extension is without pay.

Japan. To ensure sufficient flexibility, "periodically" should be replaced by "as necessary".

NIKKEIREN: Expert medical opinion has confirmed that 12 to 14 weeks of maternity leave is reasonable. Periodic examination with a view to extension is unnecessary.

Jordan. Federation of Jordanian Chambers of Commerce: Yes.

General Federation of Jordanian Trade Unions: Yes.

Kuwait. The extension of leave depends on the conditions in each State, concerning capacities and resources in relation to women workers.

Lebanon. This should be left to member States to determine in accordance with their economic and social conditions. Consideration should be given to allowing countries that cannot implement a 12-week maternity leave to determine a shorter leave which would be increased when circumstances allow. Such countries would be required to include in their reports to the Office the reasons which prompted them to resort to such an arrangement and the measures they are taking to increase the period of maternity leave, as appropriate.

Lithuania. Confederation of Lithuanian Industrialists: No.

Malaysia. When deemed appropriate and necessary.

MEF: No. If maternity leave is already reasonable and long, there is no need to review upward only. Review can also be downward.

Mauritius. MEF: No. Extension of leave is not advisable.

Mexico. The meaning of "appropriate" should be determined. Medical, technological and social advances currently mean better care for mothers and their children, which would tend to have the effect of reducing leave, rather than extending it.

Republic of Moldova. Postnatal effects can vary and provisions should not be restricted to one set period.

Mozambique. According to the conditions of each country.

OTM: This could be achieved only in countries with strong and stable economies.

Namibia. NEF: Yes.

NUNW: Yes. To keep the representative organizations of workers informed of changes taking place.

Netherlands. There is no objection to periodic research into the desirability of extending the period of 12 weeks.

New Zealand. Member States should regularly examine maternity leave provisions in their own countries. Parties to an employment contract are free to negotiate a longer period of leave.

NZCTU: Member countries should be required to regularly examine maternity protection laws in consultation with workers' and employers' organizations with a view to extending entitlements.

Pakistan. Twelve weeks is considered sufficient. A collective agreement to further extend maternity leave would be considered appropriate.

Papua New Guinea. In order to iron out the disparities of such an entitlement to women workers in both sectors of employment.

Peru. CUT: The risk of overprotection and its negative impact on women's employment should be taken into account. The periodic review should take place annually.

Philippines. Extending maternity leave may be appropriate in due time, after consultations so warrant.

Poland. Confederation of Polish Employers (KPP): Yes.

All-Poland Trade Union Alliance (OPZZ): Yes.

Portugal. This provision should be moved to the Recommendation.

Portuguese Confederation of Farmers (CAP): Yes. The increase in maternity leave cannot be unlimited without prejudicing women's access to employment and career development.

CIP: No. The absence of a worker from an enterprise, even if there is no increase in direct costs, always impacts on its normal operations and may affect levels of productivity.

CGTP: Yes.

UGT: The possibility of periodic re-examination through social dialogue in each State should be intensified and extended to other areas.

Romania. (Tripartite) collective agreements could contain special arrangements aimed at organizing consultations with a view to increasing the duration of maternity leave for certain categories of employees and enterprises. Current trends encouraging breastfeeding for as long a period as possible should be taken into account.

Russian Federation. In accordance with each country's economic possibilities.

Saudi Arabia. Depending on the national legislation.

Seychelles. Reword this clause by allowing either party to initiate any proposal thereof.

South Africa. BSA: No. Twelve weeks is sufficient. As it is, many SMEs will have difficulties in accommodating a 12-week maternity leave period. Furthermore, individual collective bargaining affords employers and employees the opportunity to extend the period taking into account the financial, employment and practical realities in a particular enterprise or sector.

Spain. This point would be more appropriate for the Recommendation. Certain restrictions should apply to this type of revision.

CIG: Yes.

Suriname. ASFA: No.

Switzerland. If the leave provided in national legislation already exceeds 12 weeks, this provision is superfluous; if it is less than 12 weeks, such a provision will not cause it to be lengthened. On the other hand, the draft Convention could contain a non-regression clause so that countries providing more than 12 weeks of leave could not reduce the leave period.

UAPG: It is up to the social partners to consider.
VSA: Yes.

Togo. The 12-week minimum should be extended to 14 weeks.

Tunisia. Such an obligation could constitute an obstacle to ratification, as was the case with regard to Convention No. 103. The Convention should be limited to the minimum. Ratifying States may always provide better measures in their national legislation.

United Kingdom. It is important to ensure the arrangements are working. However, once a minimum reasonable period of maternity leave has been established, it may be more important to consider a wider range of options for promoting family-friendly employment policies and flexible working arrangements to help both parents combine work and family life.

United States. Medical research is continually discovering facts that have an impact on the quality and longevity of our lives. It is only logical to evaluate such research, including that which focuses on pregnancy and the unborn foetus, in terms of its relevancy in the workplace on an ongoing basis.
USCIB: No.

Uruguay. National Chamber of Commerce and Chamber of Manufacturers: No.

Zimbabwe. The Convention should set a maximum periodicity of three years for the consultations.
ZCTU: Yes.

Paragraph 1

A very strong majority of governments, employers' and workers' organizations replied affirmatively to this question which combined the entitlement to leave contained in Article 3(1) with the minimum 12 week leave period set in Article 3(2) of Convention No. 103.

There were three categories of replies to this question. A large number of governments and workers' organizations considered that 12 weeks should be an absolute minimum. Some suggested periods of 14, 16 and 18 weeks, citing Paragraph 1(1) of Recommendation No. 95, national legislation and EU Council Directive 92/85/EEC in support of their views. For other respondents, shorter periods of leave, such as six, eight or ten weeks, were considered sufficient. For some of these countries, difficult financial circumstances would make a 12 week leave period hard to achieve. The possibility of a progressive approach to reaching that level was proposed. Yet a few other replies suggested that the duration of leave should not be set in the Convention, but should be determined by national law or be decided by the woman and her doctor.

While a number of replies underlined the importance of requiring a medical certificate, reservations were expressed by a few that such a requirement could be difficult to meet in rural areas or in situations where prenatal care and attendance at birth are not necessarily provided by medical personnel authorized to issue such certificates. It was suggested that the type of certification be determined according to national law and practice.

A few countries also noted that their national law laid down additional conditions of eligibility for leave, such as a specified period of continuous employment, or submission of a written request for leave within a required notice period.

Taking into account the various views expressed, the Office has retained the 12 week minimum period in *Point 7(1)* of the Proposed Conclusions. It notes as well that *Point 14* of the Proposed Conclusions contains a general provision concerning the implementation of the provisions of the Convention which provides for flexibility.

Paragraph 2

Most ILO member States currently grant maternity leave periods of more than 12 weeks and interest has been expressed in encouraging extensions beyond that minimum. A strong majority of governments and workers' organizations were in favour of providing for the periodic examination, in consultation with the most representative organizations of employers and workers, of the possibility of extending the period of maternity leave as appropriate.

Whether in favour of such a provision or not, many governments raised the point that any extension of the leave period would depend on national social and economic conditions. Indeed, the intent of this proposal was to provide such flexibility, while nonetheless encouraging periodic review of the situation at national level.

Equality of treatment was another major concern raised with regard to the length of the leave period. At issue was the question of whether an extension of the maternity leave period would result in discrimination in hiring and retention or jeopardize women's reintegration into the labour market. It was suggested that a longer period of leave might be provided in the form of parental leave available to either parent. Family-friendly employment policies and flexible working arrangements might also lessen the need for lengthier maternity leave. The Office notes that a periodic review of the appropriateness of extending leave might include careful consideration of the impact of any extension with regard to these concerns.

Some respondents questioned whether periodic review could not result in shorter leave. It was suggested that, rather than including a provision for periodic review of the leave period with a view to possibly extending it, a non-regression clause could be included to prevent member States which provide more than 12 weeks leave from reducing that amount. In this regard, attention is drawn to Article 19(8) of the ILO Constitution.[1]

New points

In addition, *Points 7(2)* and *(3)* of the Proposed Conclusions have been drafted to respond to the concerns of Members who already provide more than 12 weeks of maternity leave and who voiced support for a longer leave period to be set in the Convention. As formulated, these Points would require Members at the time of ratification to specify the period of leave they provide and would provide the opportunity for them to notify the ILO of any extensions, thus undertaking an international obligation in this regard.

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[1] Article 19(8) of the Constitution provides as follows: "In no case shall the adoption of any Convention or Recommendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation."

Among those who were not in favour of periodic review, some considered that inclusion of such a provision could create unjustified expectations. Collective bargaining was suggested by a number of respondents as an appropriate means to extend the leave period in sectors or enterprises where longer leave was warranted. One government stated that such a provision could be an obstacle to ratification. Another suggested shifting this provision to the Recommendation.

A number of replies understood periodic examination of the length of maternity leave to apply to individual cases. The intention of Question 5(2), however, was to provide for periodic national-level, tripartite examination of the maternity leave period provided for all employed women in national law and practice with a view to lengthening that period if appropriate. Additional leave for health-related reasons, provided to individual women on the basis of a medical certificate, is discussed under Question 7 below.

Given the large majority of affirmative responses, the Office has incorporated the provision into *Point 13* of the Proposed Conclusions, which addresses the question of periodic review of both the length of leave and the amount or rate of benefits, discussed under Question 9(2) below.

Qu. 6

(1) Should the leave referred to in question 5 above include a period of compulsory leave?

(2) If so, should the duration and distribution of the compulsory leave be determined in each country in consultation with the organizations of employers and workers concerned, having due regard to the protection of health of mother and child?

Paragraph 1:

Total number of replies: 106.

Affirmative: 78. Algeria, Austria, Bahrain, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Cambodia, Cameroon, Central African Republic, Chile, China, Colombia, Comoros, Congo, Croatia, Cuba, Cyprus, Czech Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Greece, Guyana, Honduras, India, Indonesia, Islamic Republic of Iran, Italy, Japan, Jordan, Kenya, Republic of Korea, Kuwait, Luxembourg, Mali, Mauritius, Morocco, Mozambique, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Papua New Guinea, Philippines, Poland, Portugal, Qatar, Russian Federation, San Marino, Saudi Arabia, Seychelles, Slovakia, Slovenia, Spain, Sri Lanka, Suriname, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uruguay, Venezuela, Viet Nam.

Negative: 15. Angola, Australia, Chad, Jamaica, Latvia, Lithuania, Malaysia, Republic of Moldova, Namibia, New Zealand, Peru, Romania, Ukraine, United Arab Emirates, United States.

Other: 13. Argentina, Bulgaria, Canada, Costa Rica, Denmark, Hungary, Lebanon, Mexico, Myanmar, South Africa, Sweden, United Kingdom, Zimbabwe.

Paragraph 2:

Total number of replies: 92.

Affirmative: 76. Algeria, Austria, Bahrain, Barbados, Belarus, Belgium, Benin, Bulgaria, Cambodia, Cameroon, Canada, Central African Republic, China, Colombia, Comoros, Congo, Costa Rica, Cuba, Cyprus, Czech Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Greece, Guyana, Honduras, Hungary, India, Indonesia, Islamic Republic of Iran, Italy, Japan, Jordan, Kenya, Republic of Korea, Kuwait, Luxembourg, Mali, Mauritius, Mozambique, Netherlands, Nicaragua, Niger, Norway, Oman, Papua New Guinea, Philippines, Poland, Portugal, Qatar, Russian Federation, San Marino, Saudi Arabia, Seychelles, Slovakia, Slovenia, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, United Arab Emirates, United Kingdom, Venezuela, Viet Nam.

Negative: 8. Angola, Botswana, Brazil, Pakistan, Peru, Suriname, Tajikistan, United States.

Other: 8. Chile, Croatia, Denmark, Jamaica, Lebanon, Mexico, South Africa, Zimbabwe.

Algeria. (1) Exclude any penalties for non-compliance if for medical reasons it is recommended that the woman continue her activity. (2) Yes for duration. Public health services should be consulted regarding distribution.

Argentina. Postnatal leave should be not less than 45 days.
CGT: (1) Yes. Leave should be compulsory and paid. (2) Yes.
UIA: No to (1)-(2). The provision in Question 5(1) is sufficient in an international instrument.

Australia. (1) A compulsory leave requirement could constitute discrimination on the basis of sex, pregnancy and family responsibilities, which are all prohibited in other ILO standards. Compulsory leave at any stage of a pregnancy operates to deny female employees the right to manage their pregnancy or family responsibilities and leave arrangements. A woman in good health should have the right to work. Consideration should be given to the health reasons for a "recommended" period of leave (e.g. six weeks following a normal birth). Any reduction in this recommended period of leave should be conditional on the production of a medical certificate so that women who wish to return to work and are healthy are able to do so.

Austria. The entire leave mentioned in Question 5 should be compulsory. Its minimum duration should be laid down in the Convention itself.
OGB: (1) No.

Azerbaijan. Azerbaijan Trade Unions Confederation: (2) Yes.

Bahrain. (1)-(2) The prescribed leave must be compulsory.

Barbados. (1) Six weeks after confinement is necessary.

Belarus. (1) The term "compulsory postnatal leave" should be used. (2) The Convention should specify the minimum period of compulsory postnatal leave.

Belgium. (1) This point might be shifted to the Recommendation. (2) Due consideration of compulsory prenatal leave.

Benin. COSI: (1) Maternity leave should be compulsory.

Botswana. (1)-(2) At least six weeks' postnatal leave should be compulsory.

Brazil. (2) The distribution of maternity leave must follow medical criteria.

CNC and CNI: (2) Yes.

CNF: (1) During the postnatal period. (2) No. The minimum period should be stipulated by national legislation.

Bulgaria. (1) Ministry of Labour and Social Policy: Yes. Ministry of Health and Ministry of Justice and European Legal Integration: No.

Canada. (1) There is no need to restrict a leave entitlement of 12 or more weeks by including a period of compulsory leave. (2) If included, the Convention and/or Recommendation should set minimum standards, but it should be up to each member State to determine the duration and distribution of the compulsory leave upon consultations with the organizations concerned.

CEC: (1) No. Such mandatory leave contravenes national legislation.

CLC: (1) Yes. Such a provision relieves women of pressure from employers not to take leave.

Chile. (1) These standards should be governed by public law relating to inalienable rights. Voluntary application for either party would not be consistent with the principle of maternity protection. (2) The Convention must establish minimum standards. If consultations with employers' and workers' organizations lead to improvements, then they should contribute to determining these.

CPC: It should be up to the woman to choose how to distribute the leave.

China. All maternity leave should be compulsory.

Colombia. (1) Legislation should stipulate the compulsory nature of all or at least part of it. (2) The views of health authorities and experts should be sought, analyses carried out, and legislation defined concerning these matters.

Congo. (2) In close collaboration with the occupational health services.

Costa Rica. (1) Maternity leave should be compulsory. (2) Its duration and distribution should be determined by national legislation, although the possibility should be left open for consultations with the most representative employers' and workers' organizations.

Croatia. (2) Duration of the compulsory leave should be determined by national legislation. Enlargement could be discussed, but only within legislative proceedings. Enlargement of compulsory maternity leave could result in discrimination against women in the labour market.

Croatian Associations of Employers: (2) Yes.

Confederation of Independent Trade Unions of Croatia (KNSH), Union of Autonomous Trade Unions of Croatia (SSSH), Croatian Association of Trade Unions (HUS), Federation of Croatian Trade Unions of Public Services (MATICA), and Coordination of Croatian Trade Unions of Civil Servants and Government Employees (KHSJSN): (2) Only after national legislation has determined a duration of at least than 12 weeks.

Czech Republic. ČMK OS: (1) It should amount to at least half the entitlement to leave stipulated by the Convention.

Denmark. (1) The principle of voluntary maternity leave should be maintained. A period of compulsory leave can, however, be accepted.

Equal Status Council: (1) Yes. (2) They should be laid down by statute as an individual right.

AC: (2) Yes.

DA: (1) Yes.

FTF: (1) Yes.

LO: (1) Yes. This may prevent pregnant women and women who have recently given birth from being forced to return to work earlier than desired.

Dominica. CSA: Yes to (1)-(2). Twelve weeks should be the recommended minimum. The ILO should recommend a minimum standard.

DAWU: Yes to (1)-(2).

DTU: Yes to (1)-(2).

WAWU: Yes to (1)-(2).

Ecuador. (1)-(2) The entire period must be compulsory.

CONAMU: (2) Yes.

National Federation of Chambers of Industry of Ecuador: (2) The periods of pre- and postnatal compulsory leave should be determined by national laws or regulations. The minimum duration of postnatal leave should be stipulated by law.

UGTE: (2) No. The whole period of leave should be compulsory.

Egypt. (2) Provided that compulsory leave is not less than 40 days.

El Salvador. (2) The duration of such leave should be obligatory. However, account should be taken of the recommendations of medical practitioners, as well as the occupational health services.

Estonia. Estonian Association of Trade Unions: (1) No.

Ethiopia. CETU: (1) No.

Finland. (1) Retain some flexibility with regard to leave.

TT, LTK and Federation of Finnish Enterprises: (1) No.

France. (1) The EU Directive includes two weeks of compulsory leave to be taken before and/or after the birth. (2) Eight weeks of compulsory leave are needed (two weeks before and six after).

CFDT: (2) No. Leave should be uniform, although specific circumstances should not be excluded.

CFE-CGC: (2) No. Maternal and child protection cannot depend on the outcome of negotiations. Legislative measures are necessary.

CFTC: (2) Yes. Legislation is needed to cover all employed women and to provide greater guarantees.

CGT-FO: (1) Yes. The total period of leave should be legally compulsory. (2) No. The duration of maternity leave should be set through national legislation.

Germany. (2) Legislation is necessary.

Ghana. (1) Compulsory leave should be granted when the employee is unwell and upon production of a medical certificate. (2) The duration and distribution of compulsory leave should be covered by legislation.

NCWD: (1) Any compulsory period per medical recommendation should not constitute part of the leave mentioned in Question 5.

GEA: (1) No.

Honduras. COHEP: (2) Only the minimum conditions should be laid down in the Convention.

Hungary. (1) Maternity leave is a basic right of the mother which, however, she may be obliged to exercise for the sake of the child. Under national law, a period of postnatal leave is compulsory.

India. (1) Compulsory postnatal leave should be spelled out clearly.

Bharatiya Mazdoor Sangh: (2) Minimum duration and distribution should be prescribed by the Convention. Beyond the minimum, they should be determined in each country.

National Front of Indian Trade Unions: (1) Yes. The total entitlement to prenatal leave should be compulsory.

Iraq. General Federation of Trade Unions: Yes to (1)-(2).

Italy. (1) Compulsory pre- and postnatal leave should be expressly regulated and not subject to derogations. This obligatory abstention, coupled with the related financial payment, should also apply in cases of adoption.

Jamaica. (1) No compulsory leave should be imposed on women. (2) To achieve similar standards, consensus on these matters would best be achieved by the ILO.

JEF: Yes to (1)-(2).

Japan. (2) They must be determined from a medical point of view that considers maternity protection.

JTUC-RENGO: (1) Compulsory maternity leave should be provided as in Convention No. 103, Article 3(2)-(3).

Republic of Korea. (2) To facilitate voluntary agreement.

Latvia. (1) National legislation provides women with the right to choose.

Lebanon. (1) Compulsory postnatal leave is a sound principle, regardless of the duration of the maternity leave. (2) The duration of postnatal compulsory leave should be determined in each country. Prenatal compulsory leave should be determined on the basis of a medical certificate or on request from the mother, supported by a medical certificate stating the expected date of her confinement.

Lithuania. Confederation of Lithuanian Entrepreneurs/Employers: (2) Yes. Everything must be agreed upon by the employer and the worker.

Lithuanian Workers' Union: Yes to (1)-(2).

Malaysia. Malayan Agricultural Producers Association (MAPA): Yes to (1)-(2). (1) A period of compulsory leave is necessary. It will be dependent on various factors, such as health of the woman, culture, etc.

MEF: Yes to (1)-(2).

Mali. (2) A minimum duration should be defined in the Convention.

Mauritius. Postnatal compulsory leave should preferably be at least six weeks long.

MEF: No to (1)-(2).

Mexico. The leave foreseen in Question 5(1) should be compulsory. In that case, only the distribution of leave would be determined in each country.

Morocco. Postnatal compulsory leave should last no less than six weeks.

FCCIS: Yes to (2).

CDT: Yes to (2).

Mozambique. (1) Irrespective of whether the child is born alive or dead.
OTM: (2) National health authorities should be included.

Namibia. NEF: Yes to (1)-(2). (1) At least four weeks before and after confinement.
NUNW: Yes to (1)-(2). (1) But the choice can still remain with the person concerned.

Netherlands. (1) The prohibition with regard to work, which is inherent in a period of mandatory maternity leave, must be imposed solely with regard to the employer and not with regard to employees.

New Zealand. In New Zealand, there is a presumption of mutual agreement about when leave shall occur, although in certain circumstances a medical practitioner has the right to determine a date when maternity leave should begin. An employer will only have the ability to require that the employee begin maternity leave where the employee is unable to perform her work due to safety concerns, or the absence of other adequate work. If the instrument provides a right to a particular period of maternity leave, it should allow employees and employers to agree to a return to work before the end of the available period of maternity leave. Such a decision must be a voluntary one, and not subject to duress.

NZEF: (1) Compulsory leave would be seen as paternalistic, overriding a woman's right to choose how much or indeed whether to take leave at all.

Nicaragua. (1) Under national law, it is obligatory to take the leave and obligatory for the employer to grant it.

Niger. (1) Several weeks before and after delivery.

Norway. (1) Under national law, exemptions may be granted to compulsory leave upon presentation of a medical certificate stating that it is better for the mother to resume work.

Pakistan. (1) The leave foreseen in Question 5(1) should be compulsory.
PNFTU: (1) No.

Peru. (1) The entire maternity leave period is obligatory.
CUT: Yes to (1)-(2). (1) At least six weeks' postnatal leave.

Philippines. (1) A compulsory leave of at least four weeks should be included. (2) Each country should determine the particular features of its compulsory leave.

Poland. KPP: (1) Existing wording should remain.

Portugal. UGT: (1) Part of the maternity/paternity leave period must not be subject to negotiation or waiver by the entitled person. This right should be made irrevocable by law. A period of postnatal leave should be compulsory. (2) On condition that there is no regression with regard to the six weeks' compulsory postnatal leave currently provided in the Convention.

Romania. (1) Many women may no longer be interested in mandatory pre- or postnatal leave. It is up to women to decide when and for how many days they might take leave.

National Council of Private Small and Medium-sized Enterprises: Yes to (1)-(2). (1) The possibility of either the employer or the mother renouncing maternity leave should be eliminated. (2) Medical recommendations must also be considered.

CSDR: Yes to (1)-(2).

San Marino. (1) The 12-week leave period should be compulsory. (2) The Convention may determine the distribution, taking into account WHO recommendations.

Saudi Arabia. (2) When such organizations exist.

Slovakia. (2) Consultations with the organizations of employers and workers and relevant state bodies should precede legal regulation.

South Africa. (1) Mothers should have the option to return earlier, but only with a medical certificate. (2) The Recommendation should include a figure of six weeks. It may be inappropriate to leave this matter entirely to member States.

BSA: (1) Probably. (2) Yes.

Spain. The wording of Article 3(2) of Convention No. 103, referring to the period of six weeks' compulsory leave, should not be amended.

Sri Lanka. Leave to be granted on medical advice.

Suriname. (2) Six weeks of compulsory postnatal leave should be maintained in accordance with Convention No. 103.

ASFA: (1) No. (2) Only on the advice of a physician.

Federation of Farm Workers (FAL): No to (1); yes to (2).

Sweden. (1) The provision in Article 3(2) of Convention No. 103 was a decisive obstacle to ratification by Sweden, where parental leave is a right but is not obligatory for parents. The Convention should provide that the employee is entitled to leave of absence, but shall not be compelled to take leave of a certain, predefined period. This implies a duty on the employer's part to grant leave. (2) If compulsory leave is introduced in the Convention, its duration and distribution should be determined in each country.

Switzerland. (2) This is best decided in each country, especially since the same objective (protection of health of mother and child) can lead to opposing views. This has been the experience in recent Swiss parliamentary debates.

UPS: (1) No. Unless there are medical reasons to the contrary, the woman should be free to choose. (2) The social partners should decide in their collective agreements.

VSA: (1) Yes. The provision of a compulsory leave period is the only way of ensuring that women are not subjected to pressure to forego leave "voluntarily". Such protection is particularly important for women with low earnings.

Syrian Arab Republic. (1) The compulsory period should be not less than 40 days.

Turkey. (1) Compulsory leave may be shorter than 12 weeks.

TISK: (1) The whole period of maternity leave should be compulsory.

TURK-IŞ: (1) Compulsory leave should be set in consultation with the concerned health authorities.

Ukraine. (1) Such leave should be added to the leave referred to in Question 5.

United Kingdom. (1) The United Kingdom is willing to accept a two-week compulsory leave period around the time of the birth, but would not wish to impose further restrictions on women taking their leave at the time most suitable to them. (2) Employers and employees and their respective organizations should be encouraged to agree these matters, wherever possible.

United States. Compulsory maternity leave would violate current national law(s). A woman and/or her physician should be able to choose how long she wishes, and is able, to work.

USCIB: The personal and economic decision to work should be the woman's and should not be dictated by the state.

AFL-CIO: (1) Compulsory leave discriminates against women based on pregnancy, childbirth, and maternity status.

Uruguay. National Chamber of Commerce and Chamber of Manufacturers. (2) Yes.

Venezuela. The compulsory period should be defined and extended in the light of circumstances.

Viet Nam. Twelve weeks should be the minimum compulsory period.

Zimbabwe. (1) Fathers/men should also contribute some of their leave days. (2) Also consider protection of the health of the family, including fathers.

ZCTU: Yes to (1)-(2). (1) In addition to the 12 weeks. (2) The minimum period should be set in the Convention. A country can then negotiate regarding the rest.

A strong majority of governments and employers' and workers' organizations indicated that maternity leave should include a period of compulsory leave. A period of compulsory leave of at least six weeks is currently provided in Article 3, paragraphs (2) and (3), of Convention No. 103.

Health protection was the most frequently mentioned reason for providing a period of compulsory leave. Several respondents stated that a period of compulsory leave would provide protection from employers' pressure on women to return to work before the leave entitlement had been exhausted.

Several replies did not support inclusion of a provision on compulsory leave in the Convention, referring for instance to the woman's right to decide when to return to work.

The proposal contained in Question 6(2) differs in three ways from Article 3(3) of Convention No. 103: it does not state a minimum compulsory period; it does not specify that the compulsory period should be prescribed in national laws or regulations; and it requires consultation with the social partners.

A large majority of governments and employers' and workers' organizations agreed that a determination should be made in each country of the duration and distribution of compulsory leave. However, a significant number of governments and workers' organizations suggested that a minimum period of compulsory leave be specified in the Convention or Recommendation. Some replies stated that the full (12-week) period of maternity leave should be compulsory. Others suggested that compulsory leave be limited to two, four, six or eight weeks or to the post-natal period. No clear consensus emerged, however, as to the length or distribution of the compulsory period.

Another group of governments as well as some employers' and workers' organizations stated that a period of compulsory leave should be provided for in national legislation, which was seen to provide more uniform protection than negotiations between the social partners. Only a small number of respondents stated that the duration and distribution of compulsory leave should be left to agreements between employers and workers.

Considering that the main rationale for a period of compulsory leave was health protection, several governments and an employers' organization suggested that the advice, not only of the social partners, but also of public health services, occupational health services or medical practitioners should be sought.

Because of the general support for the provisions contained in Questions 6(1) and (2), these have been included in *Point 8(1)* of the Proposed Conclusions.

In case of illness, complications or risk of complications arising out of pregnancy or confinement, should additional leave be provided on the basis of a medical certificate before or after confinement, as the case may be? **Qu. 7**

Total number of replies: 106.

Affirmative: 88. Algeria, Angola, Argentina, Australia, Austria, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Croatia, Cuba, Cyprus, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Greece, Guyana, Honduras, India, Indonesia, Islamic Republic of Iran, Italy, Jamaica, Japan, Kenya, Republic of Korea, Kuwait, Latvia, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Mexico, Republic of Moldova, Morocco, Mozambique, Myanmar, Netherlands, New Zealand, Nicaragua, Niger, Oman, Pakistan, Papua New Guinea, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Negative: 10. Bahrain, Czech Republic, Ecuador, Egypt, Jordan, Namibia, Peru, San Marino, Syrian Arab Republic, United States.

Other: 8. Costa Rica, Denmark, Hungary, Lebanon, Norway, Saudi Arabia, Switzerland, United Kingdom.

Algeria. After confinement.

Argentina. In cases of illness of the mother, ordinary sick leave should be used. If the child is ill, optional leave should be granted to the father or mother if this occurs more than six weeks after the birth.

Australia. This provision should be included in the Recommendation, together with Question 15(1). Australia supports this provision referring to "additional leave", which need not be maternity leave. If an employee has pregnancy or confinement complications, she should be entitled to use her sick leave, if desired.

Austria. ÖGB: Yes. The Convention should make such an extension of leave mandatory if a medical certificate indicates that this is necessary.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Bahrain. Leave due to illness or complications arising out of pregnancy or confinement is considered to be "sick leave", which is separate from maternity leave and starts when the maternity leave is over.

Barbados. The maximum extension of maternity leave should be decided by individual countries. Thereafter, additional leave should be taken as sick leave. The granting of such leave should provide added job security. Some women have had to resign from jobs because of pregnancy complications.

Belgium. There should be no problem treating these cases as periods of illness. Assimilating them to maternity leave, however, could give rise to problems regarding compensation and protection from dismissal, for example. If necessary, this question could be partially or totally treated in the Recommendation.

Brazil. CNF: The respective salary as well as protection of employment must be ensured (if provided by national legislation).

Canada. In some jurisdictions, if after delivery, the medical condition of the mother or child prevents the employee from returning to work, a further period of maternity leave can be granted. At the federal level, these situations are covered under provisions for a leave of absence (distinct from maternity, maternity-related and/or parental leaves), where an employee becomes unable to perform an essential function and no alternative job is available.

CEC: It is inappropriate within the framework of a Maternity Protection Convention. This point touches upon the notion of the health of the employee and her capacity to work, which may not be linked to her pregnancy.

Chile. Member States should be left free to determine the type of leave. The involvement of health or social security systems may make allocation of sick leave, rather than supplementary maternity leave, appropriate for wage purposes.

China. Additional leave should be provided if complications are caused directly by pregnancy. Otherwise, there are no clearly defined criteria.

Colombia. If it is before, the incapacity should not affect the length of the leave. If the illness or complication occurs during the leave, legislation should provide for the possibility of additional leave on the basis of medical opinion.

CGDT: Definitely yes. In special cases affecting the health of the mother, maternity leave should be extended on the basis of a medical certificate. The respective legislation should establish sanctions for infringements of such standards.

Congo. Without prejudice to the employment contract.

Costa Rica. Whether or not the complications in question arise as a result of pregnancy, the woman should, on production of a medical certificate, be entitled to any leave she may require to maintain her health and that of her child.

Croatia. Yes, but the wording "as the case may be" should be excluded, since it is not clear who would determine it. National legislation should also provide for additional leave in the case of an illness of a child.

Cuba. Accidents or illnesses arising out of pregnancy, and also complications arising out of confinement, which necessitate a longer period of rest for the woman worker.

Czech Republic. Possible inclusion in the Recommendation.

Confederation of Entrepreneurial and Employers' Unions of the Czech Republic (UZSČR): Complications arising more than six weeks before the birth should be dealt with through sickness insurance.

Denmark. The extent to which additional leave should be provided should be determined nationally.

LO: The possibility should be examined of laying down a minimum of protection with the EU Directive on pregnant women as a model.

Dominica. CSA: Yes. Provision should be made for the extension of that period because of post-confinement illnesses of the mother or child.

DAWU: Yes.

DTU: Yes.

WAWU: Yes.

Ecuador. It should be considered as sickness and treated in the same way — either prior to or after childbirth. Accordingly, the woman is entitled to social security assistance.

CONAMU: Yes. The entitlement should also be extended to the father if he has to take on the responsibility of caring for the child.

National Federation of Chambers of Industry of Ecuador: Rather than a maternity benefit, it should be a general health provision which entitles the person concerned to similar financial and medical, as well as leave, benefits.

CEDOC: Yes.

UGTE: Yes. This should be considered additional maternity leave and not sick leave.

Egypt. Additional leave could be considered sick leave, rather than maternity leave.

Egyptian Trade Union Federation: Yes.

Ethiopia. If the sickness occurs out of the prescribed range of maternity leave before or after confinement, the woman should have the right to sick leave with pay upon presentation of a medical certificate.

Finland. The worker may be entitled to special maternity leave if work during pregnancy is not possible due to the working conditions or the nature of the work. Compensation in the form of sick pay is paid for sickness caused by pregnancy or by other disability.

TT, LTK and Federation of Finnish Enterprises: No. Absence from work for medical reasons on the basis of a medical certificate should be considered sick leave and not additional maternity leave.

France. CNPF: Yes. But to be covered through health insurance.

Germany. The additional "leave" in that case is identical with the period of compulsory sickness leave or prohibition of employment for the purpose of maternity protection, and is not an extension of maternity leave as such.

BDA: No. A distinction must be made between normal illness and the complications of pregnancy. The former should not be the subject of provisions in a maternity protection Convention.

Ghana. The period of maternity leave should be extended when necessary, but strictly upon the recommendation of a medical practitioner.

Guyana. Complications during/after delivery should result in additional maternity leave. Complications before delivery should be considered as sick leave.

Hungary. The possibility of additional leave cannot be excluded. In Hungary, such cases are covered by sick leave and sick pay.

India. National Front of Indian Trade Unions: Exceptional cases should be examined critically and, if supported by medical evidence, special leave with pay should be accorded no more than twice in a career.

Indonesia. Only after confinement, and the maximum period.

Islamic Republic of Iran. The presentation of a medical certificate and confirmation by the responsible authority are necessary conditions.

Iraq. General Federation of Trade Unions: Yes.

Italy. In the event of the mother's absence or illness or any other lack of presence, provision should be made for the possibility of compulsory leave from work applying to the father.

Jamaica. Additional leave time should be granted, with or without pay.

Japan. Each Member should be left to decide the system of leave to apply in the case of absence from work for such reasons.

NIKKEIREN: No. The right to an extension of leave in case of illness arising out of confinement, which is stipulated in Article 3(6) of Convention No. 103, is not regulated by Japanese laws and regulations. In our country, provisions for postnatal child-care leave and measures for maternity health care (including leave granted on the basis of a doctor's advice during pregnancy and within one year after childbirth) guarantee a certain period of pre- and postnatal leave. If such "substitute measures" which differ from the provisions of Convention No. 103 in effect exceed the conditions contained therein, they should be considered to fulfil the intentions of the Convention generally, and, therefore, be accepted.

Jordan. Employed women may avail themselves of sick leave.

Amman Chamber of Industry: No. Unless it is an unpaid leave or in cases recommended by a doctor.

Federation of Jordanian Chambers of Commerce: No. Our labour law does not consider providing additional leave due to illness, complications or risk of complications arising out of pregnancy or confinement.

General Federation of Jordanian Trade Unions: Yes.

Republic of Korea. Consideration should be given to special cases, to help to realize maternity protection in a more practical way. However, for countries which are unable to afford basic maternity leave, provisions permitting a grace period for additional leave should be allowed. Each nation should be able to choose the appropriate period of additional leave.

Kuwait. Additional leave, being based on a medical certificate, may be called "sick leave".

Lebanon. Such leave would be considered sick leave and would be subject to relevant sick leave regulations. The duration of such leave should be left to national laws and regulations.

Lithuania. Confederation of Lithuanian Industrialists: No.

Malaysia. Medical leave is provided for pre- and post-confinement in the event of illness/complications.

MEF: No. It should not be considered as additional maternity leave, but as sick leave.

MTUC: Yes. There should be no discrimination.

Mauritius. The typical cases of complications (e.g. illness resulting from pregnancy or confinement or multiple birth) which will entitle the worker to additional leave should be listed in the Convention in order to prevent abuses.

MEF: Yes.

Republic of Moldova. Women should be granted such leave where necessary, and it should be not less than 20 to 50 per cent of the total duration of pregnancy.

Morocco. Particularly in case of perinatal illness that would prevent a woman from resuming her work, and provided that the total period of maternity leave does not exceed 15 weeks.

Mozambique. Only on presentation of a medical certificate and under the conditions established by national legislation.

Namibia. It should be covered under sick leave, not maternity leave.

New Zealand. Requiring a medical certificate may disadvantage some employees, especially where the primary health professional involved is not a doctor.

Norway. Such a provision would be in accordance with national legislation. Where illness arises during pregnancy and, in some circumstances, after childbirth, the woman will be entitled to sick pay.

Peru. Sick leave.

CUT: Yes. A medical certificate is indispensable in order to avoid abuse.

Philippines. Additional leave may be provided, subject to consultation with employers and workers concerned. According to present national practice, maternity leave is solely for the purpose of giving birth. Illness and complications related to pregnancy may be applied to sick leave.

Portugal. Illness or complications resulting from pregnancy, which produce an inability to work, should determine the justification for absence from work. If illness or complications occur during maternity leave, the leave should be interrupted during the period of illness and resumed as soon as possible thereafter.

CIP: No. See Question 5(2).

UGT: No. Such circumstances do not justify the granting of additional leave, but the interruption or suspension of the period counted as maternity leave. Illness of the child or mother should be treated as grounds for such interruption.

Qatar. Such leave is considered as sick leave.

Romania. The woman should benefit from a supplementary medical leave that should not affect the duration of maternity leave. Prolonging her maternity leave with supplementary leaves should not adversely affect her professional career and job security.

San Marino. Must be considered as temporary unfitness.

Saudi Arabia. Periods of illness or complication may be covered through sick leave. There is no need to give an extra leave period.

Slovakia. This should be addressed through relevant national laws.

South Africa. Member States, in consultation with the social partners, should decide whether or not and which parts of this additional leave would be "maternity leave" or "sick leave".

BSA: Such additional leave should, as a matter of course, form part of the normal sick leave to which the employee is entitled and should therefore not be referred to in an ILO instrument.

Sweden. If these cases are covered in some way, e.g. by health insurance, no new rules need to be introduced.

Switzerland. The prenatal and postnatal periods must be distinguished. In Switzerland, illness or risk of complications before childbirth are considered under sickness benefits. Maternity leave is not extended due to complications or illness following delivery.

UPS: No.

UAPG and Convention of Employers of the Watch Industry (CP): Sickness and pregnancy are being confused here.

VSA: Yes.

Syrian Arab Republic. If illness arises out of pregnancy or confinement, sick leave may be provided on the basis of a duly certified medical certificate.

Togo. A woman whose health requires it should have the right to additional leave.

Trinidad and Tobago. For purposes of clarity, specify "before or/and after".

Tunisia. This leave should be considered sick leave, not an extension of maternity leave.

Turkey. TISK: In the event of long-term treatment or care, a period of unpaid leave could be granted to women after confinement in addition to the six-week period of postnatal leave on presentation of a medical certificate. The length of that additional leave could be left to member States to decide or a minimum period could be laid down in the Convention.

United Kingdom. Outside the maternity leave period, a woman who is ill, including with a pregnancy-related illness, should be able to benefit from the normal sickness leave and pay arrangements provided by the company or the state. A woman should be protected from dismissal during the pregnancy and the maternity leave period if she is absent from work for maternity-related illness.

United States. AFL-CIO: Yes.

Venezuela. This should include complications affecting the baby.

Zimbabwe. But other types of leave, e.g. sick leave or compassionate leave, can be utilized, including the leave entitlement of the father.

ZCTU: Yes. Additional leave should be paid as sick leave following confinement.

The importance of providing additional leave in the case of illness, complications or risk of complications was seen in the strong support for this provision by governments as well as employers' and workers' organizations. This question combines the substance of Article 3, paragraphs (5) and (6), in Convention No. 103 and has been included in *Point 8(2)* of the Proposed Conclusions.

A number of replies reflected a certain confusion with regard to the words "extension" of leave and "additional leave". Throughout the questionnaire and in the Proposed Conclusions, the Office has used the term "extension" of leave to refer to the lengthening of the maternity leave period provided through national law and practice. The term "additional leave" was used by the Office in view of the fact that Members often provide such leave under national provisions regarding sickness, disability or other necessary absence from the workplace, rather than within maternity leave provisions per se. Thus, the term "additional leave" refers to any extra period of leave provided in the event of illness, complications or risk of complications.

Comments from respondents indicated differences in how the additional leave should be considered. Many governments and a number of employers' organizations specified that an absence of work due to illness, complications or risk of complications should be treated as sick leave or that it was so considered in their national legislation. A few replies suggested that such leave be treated as additional maternity leave. While retaining a provision for additional leave, the Office did not seek to determine whether or not the additional leave provided should be maternity leave, sick leave or some other form of leave, but felt it better to leave this determination to national law and practice.

A small group of respondents proposed that a maximum period be set for such additional leave, whereas a comparable number noted that additional leave should be provided as required on medical grounds. In light of the differing views expressed, the formulation in *Point 8(2)* leaves the matter to the competent authority in each member State.

Several governments noted the need for enhanced job security during leave for maternity-related illness, an issue which is addressed in Question 12(1) below.

MATERNITY BENEFITS

Qu. 8 *While absent from work on maternity leave referred to in question 5 above or on additional leave referred to in question 7 above, should all women who comply with the conditions prescribed in each Member be entitled to receive cash, and medical benefits in accordance with national laws and regulations?*

Total number of replies: 106.

Affirmative: 92. Algeria, Angola, Argentina, Australia, Austria, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Germany, Ghana, Guyana, Honduras, Hungary, India, Indonesia, Islamic Republic of Iran, Italy, Japan, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lithuania, Luxembourg, Mali, Mauritius, Mexico, Republic of Moldova, Mozambique, Netherlands, Nicaragua, Niger, Oman, Pakistan, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, San Marino, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Negative: 3. Bahrain, Ethiopia, Namibia.

Other: 11. Greece, Jamaica, Lebanon, Malaysia, Morocco, Myanmar, New Zealand, Norway, Papua New Guinea, Sweden, Togo.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Bahrain. The cash benefits are in fact the wages due to a working woman for the period of compulsory maternity leave. Under national law, there is no scope for the provision of cash or medical benefits as compensation or benefits, except within the limits of the stipulated wage.

Barbados. Women on maternity leave should be entitled to cash benefits through a social security scheme, and medical care provided under the national health care system. In countries where such schemes are inadequate, alternative provisions should be made.

Belgium. From the point of view of equality of treatment, it is essential that pregnancy does not result in an important loss of revenue for the woman. Otherwise, women are placed in an unfavourable or even discriminatory position compared to men.

Botswana. To enable them to sustain themselves during maternity leave.

Canada. Maternity benefits should be accessible to all women who comply with prescribed conditions in accordance with national laws and regulations. In Canada, these are afforded to women on leave through the interaction of the employment insurance benefits, collective agreements supplements, private insurance and group-insurance plans, publicly funded health care and, to some extent, welfare.

CEC: Yes. In order to minimize the economic impact on the pregnant employee.

CLC: Yes. Provisions for maternity protection are meaningless without economic measures which allow women to avail themselves of such measures.

Central African Republic. Such benefits would help stabilize, if not improve, the material and moral situation, during both the prenatal and postnatal periods.

Chile. The instrament would not effectively secure protection of legal entitlements if working women lacked the economic means and necessary medical care to support themselves properly and to maintain their health.

China. Women are entitled to benefits during maternity leave. As for cash payments, consideration should be given to the national conditions, because some countries treat this as sickness benefits. Medical benefits must be paid, no matter what method is used.

Congo. In conformity with the social security code of each country.

Cyprus. Entitlement to benefits, and particularly cash, is essential to give substance to the right to leave.

Denmark. Equal Status Council: Maternity leave is a temporary social event, after which the woman will again be able to provide for herself.

LO: It is a precondition for the leave rights to be exercised to their maximum extent.

Dominica. CSA: Yes. Conditions should be established to ensure the health of mother and child. Cash and benefits will definitely alleviate some problems.

DAWU: Yes.

DTU: Yes.

WAWU: Yes.

Ecuador. The woman must be entitled to receive her full wage during the 12 weeks of leave, as well as medical care. Where the employer has failed to affiliate her, the employer must bear the resulting costs.

CONAMU: Yes. These benefits should apply particularly to women who are heads of households. Women in this position should also be subsidized.

National Federation of Chambers of Industry of Ecuador: Yes, but the treatment of complications prior to or following the period of maternity leave should be governed by general health provisions rather than as a maternity benefit.

UGTE: Yes. Maternity leave will be effective if the woman is guaranteed medical and financial benefits.

Egypt. It should be considered as pay rather than benefits, because maternity leave must be a paid leave and the wages of the mother cannot be deducted from this leave.

Federation of Egyptian Industries: Yes, provided that these benefits are considered as such, rather than as a wage.

Ethiopia. The provision of cash and medical benefits with regard to maternity requires a strong economic status, and is only applicable in developed and economically stable countries. Such benefits are open for collective bargaining negotiations.

CETU: Yes.

Finland. The maternity allowance should compensate a person's loss of earnings in reasonable proportion to earlier income. On medical benefits, see Question 18, and on cash and medical benefits, Question 19(c). Individual countries should determine the amount of benefits in accordance with national laws and regulations.

France. Cash benefits in the form of a daily indemnity are provided to employed women who meet the required minimum level of activity. Benefits are intended to encourage women to stop working for a determined period in order to protect their health and that of the child. Employed women who do not fulfil the minimum requirements nonetheless receive medical benefits.

CFTC: Yes. Necessary to allow employed women to stop work without loss of salary.

CGT-FO: Yes. One hundred per cent coverage.

Ghana. This is to ensure that all financial obligations arising out of pregnancy and after delivery are fully met and the welfare of women protected.

GEA: No. Only medical benefits are provided in addition to salary.

Greece. All working women should have the right to cash and medical benefits while on maternity leave.

India. AITUC: Yes. For a country like India, benefits are absolutely necessary bearing in mind the health of mother and child.

Bharatiya Mazdoor Sangh: Yes. For leave in excess of maternity leave, an amount equivalent to 25 per cent of earnings before confinement should be given.

Indonesia. APINDO: No. Possible medical benefits (according to agreement), but not cash.

Iraq. General Federation of Trade Unions: Yes.

Jamaica. While there is a need for some kind of cash or medical benefits for potential mothers, benefits should be dependent on the socio-economic condition of the woman.

JEF: Exceptions should be permitted.

Japan. Regarding medical benefits, it should be permitted to provide cash to help a woman with medical expenses, separate from the cash benefits for maintenance of living.

Republic of Korea. Cash and medical benefits should be provided, depending on national circumstances. It may be desirable for developing countries to provide additional leave without pay or with lower benefits and to enhance the level of benefits gradually.

Lebanon. Each member State should determine the amount of cash and medical benefits to be provided in accordance with national laws and regulations, having due regard to the fact that maternity leave may be less than 12 weeks.

Malaysia. Any payments in respect of additional leave should be left to negotiation between parties.

MAPA: Yes.

MEF: No. Not all maternity leave entails cash payment. Confinement beyond the eligibility limit is without pay.

MTUC: Yes. The above needs to be regulated throughout.

Republic of Moldova. The State should monitor the development of the country's gene pool and stimulate that development where necessary.

Morocco. All women who comply with the conditions should be entitled to cash benefits. Medical and family benefits should be provided on the basis of a medical file and within the limits prescribed by national legislation.

FCCIS: Yes.

CDT: Yes.

Myanmar. Female government employees to whom social security legislation is applicable are entitled to maternity benefits, apart from maternity leave of 12 weeks with full pay.

Namibia. Medical benefits should be covered under medical aid schemes, not maternity schemes.

NEF: Yes.

NUNW: Yes. As long as States can adhere to the national laws and regulations.

Netherlands. FNV: The wording of Article 4(1) of Convention No. 103 is preferable to the wording of this question. The entitlement to medical benefits during the pregnancy, i.e. before the maternity leave, is of crucial importance to the health of the woman and her unborn child.

New Zealand. In general terms, the New Zealand Government agrees. There should be no specific requirements in any instruments as to what benefits should be provided. The provision of cash benefits which exceed those provided through a taxation-based means tested system of income support should be a matter for private negotiation between employees and employers. The provision of insurance-type cash benefits to replace income during periods of maternity leave should be the responsibility of individuals.

NZCTU: Yes. Leaving the detail of benefits provided to national laws and regulations would defeat a fundamental purpose of the Convention, which is to provide income security for women while on parental leave. Many women simply do not have sufficient bargaining power to negotiate paid leave and most contracts do not make provisions for it. Currently, 83 per cent of private sector contracts and 61 per cent of all contracts in New Zealand have no payment provisions and, where payments do exist, they are often only for a short period.

Norway. The thrust of this question is that, under the Convention, the right to medical benefits will depend on national legislation containing such provisions. This will be unproblematic in relation to Norwegian law.

Papua New Guinea. Superannuation/medicare benefits are available to women workers who are members of such schemes.

Peru. CUT: If the wording "in accordance with national laws and regulations" is retained, then at least the minimum level of benefits prescribed in the Convention should be guaranteed.

Portugal. Granting maternity benefits in accordance with national legislation may facilitate the ratification of the Convention.

UGT: This could be a step backward from the current Convention. The question as formulated seems to allow the State discretion concerning not only the conditions for granting benefit, but the persons to whom the law applies, leaving it to each national legislation to grant the right to women who meet the conditions laid down. The entitlement to a right cannot be annulled by conditions restricting its full effect or enjoyment. Thus, during the absence from work, the woman has the right to cash and medical benefits. National legislation shall, as a consequence, fix the conditions for granting them.

Qatar. Benefits are to be defined by national legislation and regulations. The instrument should provide for a paid maternity leave, but additional leave should be submitted to national legislation.

Slovakia. This should be addressed by the relevant national laws.

South Africa. BSA: A right to maternity cash benefits while on normal maternity leave is an accepted principle in terms of unemployment insurance in South Africa. It might, however, prove difficult in some countries. ILO instruments should take cognizance of the realities in poorer countries. Normal sick leave provisions should apply regarding cash during an additional leave period. An entitlement to medical benefits in the case of pregnancy (whether the woman is employed or not) is generally accepted in South Africa, but its feasibility has to be questioned in countries where medical facilities are not prevalent.

Sweden. The Convention should contain rules on both medical and cash benefits.

Switzerland. UPS: Our members support the practice of cash benefits. Mixing cash benefits with the question of medical benefits creates confusion.

Syrian Arab Republic. If current laws and legislation do so provide.

Togo. If she fulfils the required conditions.

United Kingdom. Maternity benefits should be available through statutory provisions subject to reasonable qualifying conditions and limits on entitlement.

United States. Only in accordance with national laws and regulations.

USCIB: No. Whether the leave is paid or not should be resolved between the employer and woman in terms of the overall benefits package made available to all employees by the employer. Some women may value a maternity leave benefit, while others may prefer to elect other benefits or even higher pay. Mandated benefits, while appearing to be free to policy-makers, are not in reality free to employees. Research in the United States has shown that employees indirectly pay for up to 80 per cent of the cost of the mandated benefit by receiving lower wages. Mandated benefits can impede overall job creation.

AFL-CIO: Members should take all appropriate steps to ensure that women are fully informed of any qualifying conditions for receipt of cash and medical benefits, and that these conditions are not burdensome. When reasonable grounds exist for a woman's failure to comply with such conditions, benefits should still be granted.

The vast majority of replies from governments, as well as from employers' and workers' organizations, supported the inclusion of this provision within the Convention. Cash and medical benefits were seen as essential to ensuring the economic security and health protection for a woman and her child while she is on maternity leave. However, a few respondents did not consider that detailed provisions regarding cash and medical benefits were appropriate within a Convention, some being of the view that these issues should be resolved through collective bargaining. Several replies emphasized that certain countries faced particular difficulties, given the fact that their ability to grant such benefits was often conditional upon the country's level of economic development. This issue is dealt with more fully within the commentary to Question 9(3) below.

A few replies preferred the wording in Article 4(1) of Convention No. 103 to that suggested in Question 8. Several replies described their own legislation on maternity protection to emphasize their view that such benefits should be provided in accordance with national laws and regulations. Based upon the comments received, the Office has reworded this proposal which sets out the general principle as in Article 4 (1) of Convention No. 103 of the entitlement to cash and medical benefits during maternity leave or any period of additional leave. However, it leaves to each Member to determine in accordance with national laws and regulations or other means, the conditions for such entitlement. This proposal is found in *Point 9(1)* of the Proposed Conclusions.

Cash benefits

Qu. 9(1) *In the case of an affirmative response to Question 8 above, should cash benefits be at a level which ensures the full and healthy maintenance of the woman and her child in accordance with a suitable standard of living, by providing for either:*

(a) the replacement of the woman's previous earnings at a rate which should not be less than two-thirds of those earnings or of the amount taken into account for the purpose of computing benefits;

or

(b) a flat rate benefit of an appropriate amount?

Paragraph 1:

Total number of replies: 93.

Affirmative: 77. Algeria. Angola. Australia. Austria. Bahrain. Barbados. Belgium. Benin. Botswana. Bulgaria. Cambodia. Cameroon. Chad. Chile. China. Colombia. Comoros. Congo. Croatia. Cuba. Cyprus. Estonia. Finland. France. Ghana. Guyana. Honduras. India. Indonesia. Islamic Republic of Iran. Italy. Jordan. Kenya. Republic of Korea. Kuwait. Latvia. Lithuania. Luxembourg. Malaysia. Mali. Mauritius. Republic of Moldova. Namibia. Netherlands. Nicaragua. Niger. Oman. Pakistan. Papua New Guinea. Peru. Philippines. Portugal. Romania. Russian Federation. San Marino. Saudi Arabia. Slovakia. Slovenia. South Africa. Spain. Sri Lanka. Suriname. Sweden. Switzerland. Syrian Arab Republic. Tajikistan. Thailand. Trinidad and Tobago. Tunisia. Turkey. Ukraine. United Arab Emirates. United Kingdom. Uruguay. Venezuela. Viet Nam. Zimbabwe.

Negative: 2. Ecuador. United States.

Other: 14. Canada. Denmark. Egypt. El Salvador. Ethiopia. Jamaica. Japan. Lebanon. Morocco. Mozambique. New Zealand. Qatar. Seychelles. Togo.

Subparagraphs (a) and (b):

Total number of replies: 88.

Affirmative: 45. Algeria. Angola. Austria. Barbados. Belarus. Botswana. Cambodia. Central African Republic. China. Colombia. Congo. Croatia. Cuba. Estonia. Finland. Germany. Guyana. India. Islamic Republic of Iran. Jamaica. Jordan. Kenya. Republic of Korea. Latvia. Lithuania. Mali. Mauritius. Morocco. Netherlands. Oman. Philippines. Portugal. San Marino. Slovenia. South Africa. Sweden. Switzerland. Thailand. Togo. Trinidad and Tobago. Turkey. Ukraine. United Arab Emirates. United Kingdom. Venezuela.

Negative: 14. Argentina, Australia, Bahrain, Belgium, Brazil, Ghana, Malaysia, Mozambique, Namibia, New Zealand, Papua New Guinea, Sri Lanka, Syrian Arab Republic, United States.

Other: 29. Bulgaria, Cameroon, Chad, Chile, Costa Rica, Cyprus, Czech Republic, Ecuador, Greece, Honduras, Hungary, Indonesia, Italy, Japan, Kuwait, Lebanon, Mexico, Norway, Pakistan, Peru, Poland, Romania, Russian Federation, Saudi Arabia, Slovakia, Spain, Tunisia, Viet Nam, Zimbabwe.

Argentina. (a), (b) Benefits should equal the normal average wages.

CGT: Yes.

UIA: (a)-(b) Yes to (a), no to (b).

Australia. The cash benefit should aim at ensuring a suitable standard of living is maintained. Methods of paying cash benefits and the rate of payments should be addressed in the Recommendation only. See Questions 17 and 19. The focus on rates of pay appears to presuppose that the benefit will be payable from social insurance. The standard should allow countries which make payments from publicly funded social security systems (non-contributory arrangements) to impose conditions such as means-testing. Furthermore, the new standard should not conflict with the Social Security (Minimum Standards) Convention, 1952 (No. 102), or the Medical Care and Sickness Benefits Convention, 1969 (No. 130), regarding payment of maternity benefits.

ACTU: (a)-(b) Benefits in accordance with (a) or (b) constitute a safety net. The goal should be benefits equal to the woman's previous earnings.

Austria. (a)-(b) Option (a) is preferable. At most, a choice could be permitted between (a) and (b).

BAK: (a)-(b) No Benefits should be based on previous earnings.

Azerbaijan. Azerbaijan Trade Unions Confederation: (a)-(b) Yes to (b).

Bahrain. (a)-(b) The woman's earnings (i.e. the agreed-to wage) should be replaced for the period of maternity leave, at least for the compulsory period.

Barbados. Benefits are paid according to the applicant's contribution record which depends on the level of earnings. (a)-(b) Where a woman fails to qualify under the national social security scheme, provision should be made to pay a flat rate based on the father's contribution to the scheme.

Belarus. (a)-(b) The affirmative answer applies to cases where flat-rate benefits exceed benefits based on previous earnings.

Belgium. See Question 8. (a)-(b) No options should be offered. Adequate benefits must ensure an income at least equivalent to what the woman would receive in the event of an interruption of work due to health reasons. Such a criterion, rather than the notion of two-thirds of earnings, should be written into the Convention.

Botswana. (a)-(b) Should be left to collective bargaining.

Brazil. (a)-(b) Should be determined by each member State in accordance with its economic situation.

CNC and CNI: No. (a)-(b) The level of cash benefits should be determined on the basis of the employee's remuneration.

CNF: Yes. (a)-(b) The woman should receive the same amount as if she were working.

Bulgaria. (a)-(b) Yes to (b).

Cambodia. (a)-(b) That depends on the social security system in each member State.

Cameroon. (a)-(b) Yes to (b). The amount should be based on national laws and regulations.

Canada. The salary-replacement provisions should propose neither full compensation nor a flat rate. Such approaches would make it impossible for Canada to ratify the Convention. Requiring a reasonable or appropriate amount to ensure the health and welfare of the woman and child "in accordance with national law and practice" would probably be workable. The replacement ratio could be a combination of national social security payments and employer paid supplementary benefits.

CEC: (a)-(b) The amount taken into account for the purpose of computing benefits. The approach should not be rigid. The financial capacity of countries should be considered.

CLC: Yes. There should be no loss of earnings or benefits for women on leave. (a)-(b) Yes.

Central African Republic. (a)-(b) On condition that the flat rate foreseen in (b) is comparable to the level foreseen in (a).

Chad. (a)-(b) Possibly.

Chile. (a)-(b) Yes to (a). The words "or of the amount taken into account for the purpose of computing benefits" should be removed to avoid subjectivity.

CPC: Cash benefits should be in line with her previous income.

China. The "suitable standard of living" and the amount of benefits should be determined by each country according to national conditions.

Colombia. The benefit should be at least equal to the income that the woman worker would receive during the period of leave.

CGTD: Yes. The Convention should establish that workers' earnings should be reviewed, at least annually, in light of monetary fluctuations.

Comoros. If the economic situation of the country permits.

Costa Rica. (a)-(b) Cash benefits should not be less than the woman's previous earnings.

Croatia. (a)-(b) Both alternatives should be kept. The sources of financing should be determined in advance, as provided for in Article 4 of Convention No. 103.

KNSH, SSSH, HUS, MATICA and KHSJSN: (a)-(b) Yes to (a) only, without an alternative.

Cuba. (a)-(b) Yes to (a).

Cyprus. (a)-(b) We prefer (a), which links replacement income to previous earnings. For option (b) to meet the objective stated in 9(1), it must be stipulated that the flat-rate benefit be fixed at such level as to secure at least two-thirds of the earnings of the typical female worker.

Pan-Cyprian Federation of Labour (PEO): (a)-(b) Yes.

Czech Republic. (a)-(b) Yes to (a).

UZS ČR: (a)-(b) Cash benefits should be set at a minimum of 60 per cent of the annual average, with the possibility of increase. The lower limit should provide the minimum required for two or more persons, depending on the number of children born. This rate should be implemented in the case of social funds even for unemployed (uninsured) women.

Denmark. Cash benefits must be laid down in accordance with national laws and regulations.

Equal Status Council: The woman's income should not be reduced.

LO: A flat-rate benefit is preferable because it protects women who have had reduced earnings for a period leading up to the birth.

Dominica. CSA: Yes. Many households are single-parent households. Cash benefits are needed to ensure the mother's and child's health. (a)-(b) No.

DAWU: (a)-(b) Yes to (a).

DTU: Yes. (a)-(b) Yes.

WAWU: Yes. (a)-(b) Yes.

Ecuador. A percentage of the worker's wage should be deducted to avoid periodic revisions. If there is a wage increase, the benefit will rise accordingly. (a)-(b) Or offer other options.

National Federation of Chambers of Industry of Ecuador: Cash benefits should be linked to previous earnings, not to the maintenance needs of either mother or child. (a)-(b) Yes to (a).

CEDOC: (a)-(b) Yes to (b).

UGTE: Yes. (a)-(b) Yes to (b). This benefit should be considered in relation to the real payments to be made, not only in relation to her remuneration.

Egypt. Cash and medical benefits must be provided according to social security provisions in each State.

Federation of Egyptian Industries: Yes. Wages should be paid in accordance with national legislation.

Egyptian Trade Union Federation: Yes.

El Salvador. These benefits should be fixed.

Ethiopia. See Question 8.

CETU: Yes. (a)-(b) Yes, with the consent of the woman.

Finland. See Question 8. (a)-(b) Choice (a) should be a priority and choice (b) guaranteed for women with no previous income.

France. CNPF: (a)-(b) No. To be set by member States.

CFDT: (a)-(b) Yes to (b).

CFE-CGC: (a)-(b) Yes.

CFTC: (a)-(b) Yes. The woman may choose the most favourable solution for herself.

CGT-FO: (a)-(b) Yes. (a) is preferable. Flat-rate benefits are uncertain unless they are periodically adjusted.

Germany. BDA: (a)-(b) Yes, but the benefit levels and the basis on which they are calculated should be left to member States to decide.

German Confederation of Trade Unions (DGB): Yes.

German Union of Salaried Employees (DAG): (a)-(b) Yes. Benefits should be based on the woman's average earnings in the three months before the birth.

Ghana. Cash benefits should be fixed in accordance with the national situation. (a)-(b) There must be consultation between social partners to determine both options.

NCWD: (a)-(b) Yes.

GEA: (a)-(b) Yes.

TUC: (a)-(b) Option (a) is preferred, since (b) may leave room for arbitrariness.

Greece. (a)-(b) Yes to (a).

Honduras. The leave must be remunerated by the wages due from the employer and the national social security system. (a)-(b) Yes to (b).

COHEP: (a)-(b) No. Any choice of this type would imply labour costs and would be unfair to the employer.

Hungary. (a)-(b) Yes to (a). The concept of "appropriate" must be specified.

India. (a)-(b) As per national laws.

Bharatiya Mazdoor Sangh: (a)-(b) Prefer (b).

HMS: The minimum wage should provide for basic needs. If not, then an additional allowance during the pre- and postnatal periods must be given to ensure the health of mother and child. The State must take responsibility for home-based workers. *(a)-(b)* Flat rates should not be encouraged.

National Front of Indian Trade Unions: (a)-(b) Cash benefits should be equal to the woman's previous earnings. Adjustments should not be detrimental to women. Corresponding employment benefits should continue.

Indonesia. (a)-(b) Option (a), in accordance with Convention No. 103.

Italy. (a)-(b) Yes to (a); no to (b).

Jamaica. The level of benefits should be dependent on the socio-economic condition.

JEF: The level of cash benefits should be dependent on affordability or contribution to a fund.

Japan. The level of such benefits will differ from country to country. Each Member should be allowed to stipulate this level through its own national laws and regulations in accordance with that country's actual situation. (a)-(b) The Convention should not stipulate a specific numerical value as in (a). The system envisaged under (b) and how it differs from (a) are hard to understand.

NIKKEIREN: (a)-(b) No to (a). Option (b) is acceptable, on condition that it complies with national laws and regulations. A more flexible provision is necessary here, such as "according to the national circumstances and within the scope of the provisions of the national laws and regulations".

JTUC-RENGO: (a)-(b) Yes to (a); (b) is unclear.

Jordan. This may be dependent on insurance which covers such benefits.

Amman Chamber of Industry: (a)-(b) No.

Federation of Jordanian Chambers of Commerce: No.

Republic of Korea. (a)-(b) Each member State should be able to choose, within certain limits, the most appropriate level and method of computing cash benefits.

Kuwait. Cash benefits should ensure the provision of all health and medical care necessary for the woman and her child. (a)-(b) Yes to (a). Option (b) allows different opinions about the appropriate amount.

Lebanon. In principle, yes. However, full and healthy maintenance may not be fully realizable at the same level in all countries. (a)-(b) Option (a) seems reasonable. Such benefits should be determined by national laws and regulations.

Lithuania. Confederation of Lithuanian Industrialists: No. Must obtain sickness benefit.

Lithuanian Workers' Union: (a)-(b) Yes, provided that the two-thirds rate is not less than the flat rate.

Malaysia. (a)-(b) Cash benefits should be commensurate with normal wages.

MAPA: No. Conditions such as a "suitable standard of living" are too subjective. (a)-(b) Yes.

MTUC: (a)-(b) No. Employers are compelled to pay full benefits

Mali. (a)-(b) The level of benefits should be related to the woman's salary.

Mauritius. (a)-(b) The woman should be guaranteed at least her minimum basic wages on the condition that she has worked for a specified period of time for the same employer.

MEF: No. Cash benefits should be given as an allowance.

Mexico. The wording is ambiguous and concepts should be defined. (a)-(b) The determining of cash benefits should be left to national legislation.

Morocco. Cash benefits should be at a level which ensures the full and healthy maintenance of the woman and her child.
FCCIS: Yes. (a)-(b) Yes.
CDT: Yes. (a)-(b) The amount should be determined.

Mozambique. According to national conditions. (a)-(b) That is the minimum benefit needed to obtain medical assistance and enjoy a decent standard of living.
OTM: Yes. Maintain all benefits, without any reduction, and establish other benefits which guarantee the health and standard of living of mother and child. (a)-(b) Yes. Option (b) is more flexible and practical.

Namibia. Cash only, no medical benefits. (a)-(b) A combination of (a) and (b) is required.
NEF: Yes. If contributions have been made for a specified period of time prior to confinement. (a)-(b) Yes.
NUNW: (a)-(b) Yes.

Netherlands. FNV: (a)-(b) Prefers (a), as in Convention No. 103.

New Zealand. See Question 8. The level, and targeting, of cash benefits should be determined by each member State. Where individuals can provide for themselves and do not require cash benefits, there should be no requirement that they receive them. (a)-(b) The provision, rates of, and qualifying conditions for any cash benefits should be decided by each member State. Specific provisions such as these will be a barrier to ratification by many member States. Unintended labour market effects could include disincentives to employ females and an overall decrease in employment due to possibly increased labour costs.
NZEF: (a)-(b) Any further arrangement beyond basic financial protection for women who need it should be a matter of agreement between the employer and the employee(s).
NZCTU: Yes. (a)-(b) Yes.

Norway. (a)-(b) Yes to (a).

Pakistan. The cash benefits must be commensurate to the requirements of mother and child. (a)-(b) Yes to (a).

Peru. (a)-(b) Yes to (a).
CUT: (a)-(b) Yes to (a). As long as the two-thirds applies to the previous earnings, rather than to the amount taken into account for the calculation of benefits.

Poland. (a)-(b) In Poland, 100 per cent of a woman worker's pay is the basis for calculation of benefits.
KPP: (a)-(b) Yes.
OPZZ: (a)-(b) Yes to (b).

Portugal. CIP: The Convention should not set minimum rights or quantify benefits. That should be left to member States.
CGTP: Yes. (a)-(b) No.
UGT: (a)-(b) No. Recommendation No. 95 already provides a rate of 100 per cent of the woman's previous earnings taken into account for the purposes of calculating benefits. This should be specified in the Convention.

Romania. The increasing number of single-parent families, in which the mother is the sole provider, must also be considered. (a)-(b) Yes to (a). A flat-rate benefit of an "appropriate" amount may give rise to interpretations less favourable to mothers, by linking the level of benefits with the financial capabilities of employers.

National Council of Private Small and Medium-sized Enterprises: Yes. Otherwise the mother would be forced to find another form of financial support. (a)-(b) Yes. The choice should be matched to the material situation and the health of mother and child.

CSDR: (a)-(b) Yes.

Russian Federation. If economic circumstances allow. (a)-(b) Current legislation provides that the amount of benefit depends on the minimum wage. Cash benefits cannot be fixed at a flat rate.

Saudi Arabia. (a)-(b) These options are unnecessary if the amount of the benefit is defined in national legislation.

Seychelles. Women on maternity leave enjoy full pay.

Slovakia. (a)-(b) Preference for (a).

South Africa. BSA: (a)-(b) The suggested two-thirds of earnings is too high. A flat rate might be an option in countries where no other provision applies, provided it is affordable.

Spain. (a)-(b) No to (b). Option (a) should be reworded in keeping with Article 4(6) of Convention No. 103, raising the currently established minimum to two-thirds of the woman's previous earnings.

CIG: (a)-(b) A benefit equivalent to 100 per cent of her usual salary.

Trade Union Confederation of Workers' Committees (CCOO): (a)-(b) Yes.

Sri Lanka. (a)-(b) In developing countries, such payments are insufficient for the satisfactory maintenance of the family.

Suriname. ASFA: (a)-(b) No to (a); yes to (b).

Sweden. (a)-(b) Cash benefits should be income-related as in option (a).

Switzerland. UAPG: The expression "full" maintenance is vague.

UPS: (a)-(b) Option (a) would be acceptable in a Recommendation.

Syrian Arab Republic. The woman should receive the equivalent of a full wage during maternity leave.

Togo. Cash benefits should be at a level to ensure the proper maintenance of mother and child. (a)-(b) If a flat rate benefit is necessary, it should follow the rule stated in (a).

Trinidad and Tobago. NATUC: (a)-(b) Women must be afforded the choice of the most beneficial benefits in this regard.

Tunisia. (a)-(b) Prefer (a).

Turkey. (a)-(b) A more flexible provision regarding the minimum replacement rate may be more appropriate.

TISK: International differences in economic levels will determine the level of cash benefits. (a)-(b) The cash benefit should be evaluated within the scope of compulsory social insurance and the amount to be provided should be determined at the national level.

TÜRK-İŞ: (a)-(b) No. Cash benefits should equal the employee's previous earnings.

United Kingdom. Yes, in accordance with standards of living in each member State. (a)-(b) Yes. The provision should permit a choice between, or a combination of, (a) and (b). The proportion of earnings replacement in (a) should be determined by each member State, subject to that rate not being less than the flat rate in (b).

United States. The provision of cash benefits should be in accordance with national law and practice.

USCIB: (a)-(b) No. Disability benefits should not distinguish between and among disabilities.

AFL-CIO: Yes. (a)-(b) Yes. Cash benefits should be provided at the greater of the two rates proposed. Members' tax laws should treat the benefits as is necessary to ensure their maximum value to the mother and child.

Uruguay. National Chamber of Commerce and Chamber of Manufacturers: (a)-(b) No. In accordance with national law and circumstances of each country.

Venezuela. Financial support should be sufficient for one or more children.

Viet Nam. (a)-(b) Option (b) seems fair and practical. Such benefits should not be less than minimum wages.

Zimbabwe. This should also be applicable to fathers. (a)-(b) The woman should be on full pay.

Should a Member which ratifies the Convention examine periodically, in consultation with the most representative organizations of employers and workers, the possibility of increasing the amount or the rate of benefits referred to above? **Qu. 9(2)**

Total number of replies: 99.

Affirmative: 80. Algeria, Angola, Austria, Barbados, Belarus, Belgium, Benin, Botswana, Bulgaria, Cambodia, Cameroon, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Cuba, Cyprus, Czech Republic, El Salvador, Estonia, Finland, France, Germany, Ghana, Greece, Guyana, Honduras, India, Indonesia, Islamic Republic of Iran, Italy, Jamaica, Japan, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Mexico, Republic of Moldova, Morocco, Mozambique, Namibia, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Peru, Philippines, Portugal, Qatar, Romania, San Marino, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Thailand, Togo, Trinidad and Tobago, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Venezuela, Viet Nam, Zimbabwe.

Negative: 9. Argentina, Australia, Bahrain, Brazil, Ecuador, Papua New Guinea, Switzerland, Syrian Arab Republic, Tunisia.

Other: 10. Canada, Costa Rica, Croatia, Denmark, Egypt, Hungary, Lebanon, New Zealand, Russian Federation, Saudi Arabia.

Argentina. CGT: Yes. Benefits should be increased to the extent possible for each type of occupation.

UIA: No. The level of benefits paid should be fixed.

Australia. Periodic reviews should be conducted to reflect the adequacy of the rate to provide both an affordable and a fair level of assistance for families at the time of birth. Indexation of the rate might also be recommended to ensure that adequacy is consistently maintained and any benchmarks preserved. Such a provision should be included in the Recommendation, or supplement 9(1) above.

ACTU: Yes.

Austria. With benefits at a level of two-thirds or even 100 per cent of previous earnings, it is pointless to impose a regular examination.

OGB: Yes. The Convention should only allow review of benefits in the sense of an increase.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Bahrain. Not if the principle of a woman's entitlement to a wage for the period of maternity leave is accepted. This is taken to represent a cash benefit, and as such requires no increase in the amount or the rate of benefits.

Barbados. 100 per cent of insurable earnings is already provided.

Brazil. CNC and CNI: No. Any increase should be determined by way of collective bargaining.

CNF: Yes.

Canada. Consultation mechanisms are likely already in place for the adjustment of government-run programmes providing benefits in such circumstances. However, there may not be comparable consultations with respect to privately run plans. Many plans, even in unionized environments, are not subject to such scrutiny.

CEC: No. It is a governmental responsibility.

CLC: Yes.

Central African Republic. This should be done within a reasonable timeframe.

Chile. This benefit should tend towards 100 per cent of remuneration. It is also necessary to take increases in women's earnings and income increases across the workforce into account, independently of whether the 100 per cent level is achieved or not.

CPC: No. Standards cannot be under constant revision, it would be detrimental for labour relations.

Colombia. Countries that do not yet recognize that the benefit should be equivalent to the salary should commit themselves to revising their legislation to bring it into line with the minimum established in the Convention.

Comoros. In line with the economic situation.

Congo. In accordance with legislation in each country.

Costa Rica. The amount should be examined periodically, in consultation with the sectors, in those cases where the amount is below the woman's earnings before taking the maternity leave.

Croatia. Consultations should be held depending on the source of financing. If the benefits are financed from the budget, consultations with employers and unions are not necessary.

Croatian Association of Employers: Yes.

KNSH, SSSH, HUS, MATICA and KHSJSN: Yes.

Czech Republic. The increase will depend on the method of construction and the financing of such a benefit. The question should also be discussed when financial imbalance occurs between incomes and expenditure on cash benefits or when circumstances call for the adjustment of the level of benefits.

Denmark. It would be administratively difficult to examine periodically whether the maternity benefit should be increased in connection with reports on the Convention.
Equal Status Council: Yes.
FTF: Yes.
LO: Yes.

Dominica. CSA: Yes.
DTU: Yes.
WAWU: Yes.

Ecuador. If a percentage is established, periodic consultation is not necessary. The possibility of one party refusing will be avoided.

CONAMU: Yes. The ILO should determine the mechanisms for these consultations, and they should be outlined in the Convention.

National Federation of Chambers of Industry of Ecuador: Periodic examinations may be inappropriate, unless they occur only when the cash benefit is considerably lower than the woman worker's usual level of income.

UGTE: Yes. It should be revised on the basis of the country's economic situation.

Egypt. If a Member pays a rate of wages, it could examine periodically, in consultation with the most representative organizations of employers and workers, the possibility of increasing this rate.

Federation of Egyptian Industries: Yes. If the State does not pay a certain rate of these benefits to the woman, the possibility of increasing this rate should be examined in consultation with the employers' organizations.

Egyptian Trade Union Federation: Yes.

Ethiopia. CETU: Yes. There may arise a need for some better arrangement.

Finland. See Question 17.

France. CFTC: Yes. To adapt benefits in line with changes in the cost of living.

Germany. BDA: No. There is no justification for a regular examination, given that decisive social and economic developments do not follow a regular course.

Ghana. Upward adjustment is necessary in view of inflation.

TUC: Yes, (a) does not require a review, but (b) will require a review as a matter of course.

Guyana. Actuarial assessment is also necessary when considering increases in rates.

Honduras. COHEP: Yes. If done by collective negotiation.

Hungary. Under national legislation regarding social insurance, representatives of employers and workers and those entitled to insurance benefits are entitled to make proposals, initiate action and report on issues of relevance for the development of social insurance provisions.

India. Bharatiya Mazdoor Sangh: Yes. Keeping in view inflation and rising costs.

National Front of Indian Trade Unions: Yes. As a proactive process in light of the changing social system and economy.

Islamic Republic of Iran. Benefits will increase along with annual wage increments.

Iraq. GFTU: Yes.

Italy. CONFINDUSTRIA: Should be handled through collective bargaining or national legislation.

Japan. To ensure flexibility, "periodically" should be replaced by "as necessary".

NIKKEIREN: No, unless the word "periodically" is replaced by the phrase "as occasion demands".

Republic of Korea. To update the existing level of cash benefits in accordance with the changes in economic conditions and the standards of living.

Kuwait. Because the conditions on the basis of which the amount or rate of benefits is determined may change.

Lebanon. This should be left to the individual member States to determine in the light of their economic and living conditions.

Lithuania. Confederation of Lithuanian Industrialists: No.

Malaysia. When it is deemed appropriate and necessary.

Mauritius. MEF: Yes. Through negotiation and collective bargaining.

Mexico. It is appropriate for member States, particularly developing countries, to study the possibility of increasing the amount or the rate of their maternity benefits, taking into account their financial circumstances.

Republic of Moldova. This is essential in light of considerable changes and growth in inflation.

Morocco. In accordance with the requirements of decent living.

Mozambique. Provided that the conditions of the Members so permit.

OTM: The social partners should examine on a periodic basis the possibility of increasing the amount of benefits to nursing mothers.

Namibia. NEF: Yes. Taking into account inflation.

New Zealand. Member States' governments should be allowed to set cash benefits in accordance with their national laws and practice.

NZCTU: Members should review the rates to ensure they are relevant to the standard of living.

Nicaragua. In accordance with the country's financial possibilities.

Niger. To respond to the changing socio-economic context.

Oman. To compensate for the increase in the price of basic commodities and the changing economic circumstances.

Pakistan. An agreement or amendment in the national law on the basis of such consultation would be desirable.

Peru. Only if the Member grants a cash benefit less than the average of the amount regularly received by the woman.

CUT: Annually.

Poland. KPP: Yes.

OPZZ: Yes.

Portugal. CIP: To be left to member States to determine.

UGT: Yes. Where it is not possible to provide 100 per cent earnings replacement, the Convention should contain an obligation to re-examine the possibility of increasing cash benefits.

Qatar. If alternatives (a) and (b) are adopted.

Romania. This proposal could be included within collective agreements, concluded within a tripartite framework.

National Council of Private Small and Medium-sized Enterprises: Yes. Periodic examination and modification are necessary to improve the quality and value of benefits in order to achieve the most effective social protection possible.

Russian Federation. Under national legislation, the benefit is increased in proportion to increases in the minimum wage.

Saudi Arabia. Depending on national legislation.

South Africa. BSA: No. BSA does not support the contention that the rate should be increased over time.

Sri Lanka. On the basis of the economic situation of the country.

Suriname. ASFA: Positive developments should be taken into account to increase the amount or rate of benefits.

Switzerland. No, for the same reasons invoked under Question 5(2).
UPS: No. This encouragement of further increases is a step in the wrong direction.
UAPG: Rather than "increasing", the term should be "modifying".
VSA: Yes.

Tunisia. This could constitute an obstacle to ratification. The social security bodies in the majority of developing countries already have difficulties in guaranteeing a rate of two-thirds of earnings. The Convention should be limited to the minimum. Ratifying States could always provide better measures in their national legislation.

Turkey. TISK: Yes. The conditions governing working life should be determined within a tripartite framework as far as possible and the employer and worker organizations should have a say on measures concerning them. Statutory regulations which emerge as the result of the collaboration of government, employers and workers contain, at least theoretically, the provisions most suited to the conditions prevailing in a given country. It is essential that the economy of the country and the financial balance of the social security institutions be borne in mind.

United Kingdom. Yes, if national legislation does not provide for a review of rates on a regular basis.

United States. USCIB: No.
AFL-CIO: Yes.

Uruguay. National Chamber of Commerce and Chamber of Manufacturers: Yes.

Viet Nam. The rate of benefits should be reviewed periodically to suit the country's development and to provide more favourable conditions for women.

Irrespective of the answer given in paragraph 1 above, should a Member whose economy and social security system are insufficiently developed be deemed to be in compliance with the Convention if cash maternity benefits are provided at a rate no lower than the benefits payable for sickness or temporary disability in accordance with national laws and regulations? **Qu. 9(3)**

Total number of replies: 100.

Affirmative: 77. Algeria. Angola. Austria. Barbados. Belarus. Belgium. Benin. Brazil. Bulgaria. Cambodia. Cameroon. Canada. Central African Republic. Chad. Chile. China. Colombia. Comoros. Costa Rica. Cyprus. Czech Republic. Ecuador. Ethiopia. Finland. Germany. Ghana. Greece. Guyana. Honduras. India. Indonesia. Islamic Republic of Iran. Jamaica. Jordan. Republic of Korea. Kuwait. Latvia. Lithuania. Luxembourg. Malaysia. Mali. Mauritius. Mexico. Republic of Moldova. Morocco. Mozambique. Netherlands. Nicaragua. Norway. Pakistan. Papua New Guinea. Peru. Philippines. Portugal. Qatar. Russian Federation. San Marino. Saudi Arabia. Slovakia. Slovenia. South Africa. Spain. Sri Lanka. Suriname. Switzerland. Tajikistan. Thailand. Togo. Trinidad and Tobago. Tunisia. Turkey. Ukraine. United Arab Emirates. United Kingdom. United States. Viet Nam. Zimbabwe.

Negative: 13. Australia. Bahrain. Botswana. Croatia. Cuba. Egypt. Estonia. France. Italy. Kenya. Namibia. Niger. Syrian Arab Republic.

Other: 10. Argentina. Congo. Denmark. El Salvador. Hungary. Japan. Lebanon. New Zealand. Oman. Venezuela.

Angola. Economic and social conditions not being the same in all member States. the instrument must be flexible.

Argentina. A compulsory social security scheme should be set up to provide benefits at the level of the worker's normal average earnings.

CGT: Yes. Provided that the benefits are sufficient to maintain the mother and child. to respond to the increase in the number of women who are in charge of families.

UIA: Yes.

Australia. Overall wealth in a member State should be considered in assessing the development and capacity of that State's social security and economic systems. However. if the defining of rates of benefit is not supported for developed economies. it is also not supported for developing economies. Again. this question seems to pre-suppose a social insurance system. with its focus on rates of payment and comparison between paid maternity and sick leave. It is possible that some developing countries might pay 100 per cent of earnings for sick leave. as does Australia. and this would thus impose the highest standard. This proposal should not be included in the Convention or Recommendation. as it does not adequately recognize the different conditions that exist in various countries.

ACTU: Yes.

Austria. BAK: The level of two-thirds of previous average earnings should be the minimum "floor" level

Azerbaijan. Azerbaijan Trade Unions Confederation. Yes.

Bahrain. The provision of benefits in the manner prescribed. or according to national legislation. is not enough. The Member is bound by the Convention. notwithstanding its economic situation.

Belgium. Such a provision would not be necessary if question 9(1) were settled as we have suggested.

Botswana. Should be left to the financial capacity of member States.

Brazil. CNC and CNI: No.

CNF: Benefits should be at least equal to the minimum to ensure maintenance of the woman and her child.

Canada. CLC: Yes.

Central African Republic. On condition that there is a strong will to bring the level of benefits up to that foreseen in the Convention relatively soon.

Chile. With due adjustment, taking into account the obvious difference of objective between sickness benefit and maternity benefit. This should be clearly indicated as an exception to Paragraph 1 above.

CPC: Each nation should determine its own policy in this respect.

China. The expression "economy and social security system are insufficiently developed" must be defined. Otherwise, the level of maternity protection may actually be lowered.

Colombia. Ideally, 100 per cent of the mother's salary should be fixed as the minimum, and legislation governing the benefit should be based on the basic income for the purposes of contributions to the social security system.

Congo. It is not necessary to include this in a Convention.

Costa Rica. Provided that this minimum level is adequately justified by the member State and there is a commitment to increasing the amount periodically over a defined period up to the full level of income received by the woman before the beginning of maternity leave.

Croatia. Croatian Association of Employers: Yes.

Cuba. If the social security system is insufficiently developed and its coverage is not general, the Member cannot be deemed to be complying with the provisions of the Convention.

Czech Republic. UZS ČR: No.

Denmark. Benefits during maternity leave should not be linked with sickness benefit.

Equal Status Council: Comparison should not be made between maternity leave, disease and temporary disabilities.

LO: Such a linkage would offer a minimum of social protection if such national legislation exists.

Dominica. CSA: Yes. However, measures should be addressed speedily to improve the social security system.

DAWU: No.

DTU: Yes.

WAWU: Yes.

Ecuador. It is the minimum.

CONAMU: The Convention should ensure that other contingencies are not favoured over maternity, even in the case of precarious economies and weak social security systems.

UGTE: No. Our legislation makes no provision for sickness benefits. It does provide for temporary incapacity and stipulates a value of 75 per cent of remuneration. The benefit should fully cover the maintenance of the mother and her child on the basis of real costs.

Egypt. Egyptian Trade Union Federation: Yes.

El Salvador. In El Salvador, these provisions are ensured by the national social security programme and provisions in national legislation.

Estonia. Estonian Confederation of Employers and Industry: Yes.

Finland. KT.: No.

SAK, STTK and AKAVA: Yes, only if paragraph 9(1) is absolutely unrealistic, and taking into account the needs of the mothers and their children.

France. CNPF: Yes.

CFDT: Yes. Following consultation with the social partners.

CFTC: Yes. So as not to render meaningless those provisions that cannot currently be implemented.

CGT-FO: Yes. Only if the benefits are of a sufficient level.

Germany. BDA: See 9(1).

Ghana. The level of cash benefits should be left to individual States to determine.

Hungary. The present text of the Convention offers no room for alleviations of this kind. The introduction of a rule allowing for partial exemption would be acceptable, provided that the Convention makes it mandatory to increase the provision level continuously when the changed economic situation of the member State allows.

India. AITUC: No. Cash benefits should be as indicated in Question 9(1).

Bharatiya Mazdoor Sangh: No. It would be unwise to deem a country in compliance with the Convention if benefits are provided at a rate lower than the minimum. Instead, minimum standards for under-developed, developing and developed countries should be prescribed.

Centre of Indian Trade Unions: No.

HMS: No. No Member should be deemed to be in compliance with the Convention without actual compliance under any circumstances.

Iraq. GFTU: Yes.

Italy. CONFINDUSTRIA: Should be handled through collective bargaining or national legislation.

Japan. See Question 9(1). "Members whose economy and social security system are insufficiently developed" is unclear and difficult to determine. It is inappropriate to set double standards depending upon whether the economy and social system are insufficiently developed or not.

Republic of Korea. Developing countries should be deemed in compliance with the Convention as long as they provide a certain amount of allowances. This kind of flexible criteria can contribute to increasing ratifications.

FKTU: No.

Lebanon. The question remains as to whether sickness or temporary disability benefits provided in accordance with national laws and regulations can ensure full and healthy maintenance for the woman and her child with a suitable standard of living.

Lithuania. Lithuanian Workers' Union: No. The maternity and birth benefits should be higher.

Mozambique. Each country will thus be able to adopt the Convention in accordance with its own situation.

OTM: Yes. The less-developed countries should comply with this provision in accordance with their national social security scheme.

Namibia. Members not in compliance should not ratify or should cancel the ratifications.

NEF: Yes.

NUNW: Yes.

New Zealand. It is unclear whether the benefits envisaged by this question would be required to be provided to all employees on maternity leave, or parental leave, or whether only those employees who qualify under national laws and practices are required to receive a rate of cash benefits no lower than that received by those people on sickness or temporary disability benefits. This Government strongly disagrees with the first scenario, as this would severely restrict the ability of member States to place qualifying conditions on benefits. All governments should be able to set the level of cash maternity benefits in any manner according to national law and practice, that specifically enables variations in economic and social conditions to be taken into account.

NZEF: A provision of this nature exhibits a degree of prescription which could cause countries real difficulty and could affect ratification.

Niger. The State should not be obliged to undertake commitments which it cannot honour.

Oman. The Member would be fulfilling its commitments towards the protection of motherhood.

Pakistan. National laws and regulations should determine the criteria of benefits, or workers and employers should decide through bilateral agreement.

PNFTU: Yes.

Peru. Cash benefits should allow the woman to face pregnancy and childbirth in an appropriate manner.

CUT: No. Given the current tendency to reduce social security benefits, this could lead to the lowering of maternity benefits. Countries should be encouraged to improve their social security services.

Philippines. A Member should only grant benefits it can afford in accordance with its national laws and regulations.

Poland. KPP: Yes.

OPZZ: No.

Portugal. This possibility could increase ratification by such countries.

UGT: No. This would be a serious retrograde step. The revision of a Convention should be with a view to progress. Maternity should be given privileged treatment. It is untenable to link maternity to illness or temporary incapacity.

Qatar. May provide flexibility in compliance with the Convention.

Slovakia. The phrase "economy and social security system are insufficiently developed" should be clarified.

South Africa. BSA: Yes. BSA does not support the contention that a maternity benefit should be higher.

Spain. CIG: No.

Suriname. ASFA: No.

FAL: No.

Switzerland. UPS: Define "insufficiently developed".

Togo. If the sickness and disability benefits are set with regard to the economic level of the member State.

Trinidad and Tobago. NATUC: What will be the effect of that Member ratifying such a Convention? A mechanism must be worked out.

Turkey. TÜRK-IŞ: No.

United Kingdom. The European Directive on the Protection of Pregnant Women at Work requires maternity benefits for employees to be at least as much as a woman would receive were she off sick.

United States. The same standard should apply to developed countries as well.

AFL-CIO: Yes, provided that the Member commits to upgrading benefits when its economy and social security system permit, and that its compliance status is reviewed periodically to determine whether it is meeting its commitment.

Uruguay. National Chamber of Commerce and Chamber of Manufacturers: No. In accordance with national law and circumstances of each country.

Venezuela. Benefits should be equivalent to or higher than sickness or disability benefits in accordance with national legislation.

CTV: Yes.

Viet Nam. The implementation of the Convention should be flexible in this regard to encourage compliance.

Qu. 9(4) *Should a Member which avails itself of the possibility afforded in paragraph 3 above explain the reasons therefor in its first report on the application of the Convention under article 22 of the Constitution of the ILO, and indicate the rate at which cash maternity benefits are provided, and describe in its subsequent reports the measures taken with a view to progressively raising that rate?*

Total number of replies: 101.

Affirmative: 89. Angola, Austria, Bahrain, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Greece, Guyana, Honduras, Hungary, India, Indonesia, Islamic Republic of Iran, Italy, Jamaica, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Mali, Mauritius, Mexico, Republic of Moldova, Morocco, Mozambique, Netherlands, Nicaragua, Niger, Norway, Pakistan, Papua New Guinea, Peru, Philippines, Portugal, Qatar, Romania, Russian Federation, San Marino, Saudi Arabia, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Switzerland, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, Venezuela, Viet Nam, Zimbabwe.

Negative: 7. Algeria, Argentina, Australia, Cuba, Malaysia, Namibia, Syrian Arab Republic.

Other: 5. Croatia, Japan, New Zealand, Oman, United States.

Algeria. This clause might discourage adherence to the Convention, especially since it refers to countries whose systems are insufficiently developed.

Argentina. CGT: Yes. Monitoring the effective implementation of the Convention is essential.

UIA: No.

Australia. All Members should explain both the cash and medical benefits provided in their country, as well as how these benefits are financed, in all article 22 reports.

ACTU: Yes.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Belgium. Since adequate cash benefits are a basic principle, exceptions should gradually disappear.

Botswana. See 9(3) above.

Chile. Those member States are in a special situation and must periodically report upon the possibilities they have of progressing towards these standards.

Colombia. It is important to review the experiences of member States concerning the application of Conventions, as their difficulties and limitations will serve as useful references in subsequent reviews.

Congo. In accordance with the economic progress of the country concerned.

Croatia. This obligation should be determined if final text contains a provision which would permit the exclusion mentioned.

Croatian Association of Employers: Yes.

Cuba. See 9(3). In the situation described, the Convention should not be ratified and the Member should report, under article 19 of the Constitution, which social security benefits apply to these cases and the measures proposed to progressively raise these rates.

Dominica. CSA: Yes.

DAWU: Yes.

DTU: Yes.

WAWU: Yes.

France. CFDT: Yes. Following consultation with the social partners.

CFTC: Yes. To avoid abuse and to prevent States from providing less than the minimum required by the ILO.

Germany. BDA: See 9(1).

Honduras. COHEP: Yes. However, social security will vary according to countries' economic capacity. It is not possible to lay down rigid rules applicable to all countries.

Hungary. If the Convention allows this possibility, it should be limited to the shortest possible period of time. This objective is appropriately served by instructing the member State to report continuously.

India. Bharatiya Mazdoor Sangh: Yes. If such a right is given, constant follow up is necessary to persuade progressive application by Members.

Centre of Indian Trade Unions: No.

National Front of Indian Trade Unions: Yes. Member States should also specify a timeframe for fully implementing the Convention, subject to the development of the economy.

Indonesia. To control and identify the progress.

Iraq. GFTU: Yes.

Italy. CONFINDUSTRIA: Should be handled through collective bargaining or national legislation.

Jamaica. JEF: No.

Japan. See 9(1) and 9(3). This provision is also unnecessary.

Republic of Korea. With the flexible standard suggested in the comment to Question 9(3), each nation could be made to report on the progress toward the international standard level and to commit itself to reaching the goal.

Lebanon. This procedure should be followed in all cases involving exclusion from the application of principles. But it should be left to individual States to determine the measures to be taken to raise cash benefits in accordance with its economic development, its social security system and its social and living conditions.

Malaysia. MAPA: Yes.

Namibia. NEF: Yes. As long as this report remains consistent with national laws and regulations and economic viabilities.
NUNW: Yes.

New Zealand. See 9(3).

Niger. This would allow a Member to justify national measures.

Oman. Because it is important to provide information about the Convention and to benefit from such information in the future.

Philippines. To provide flexibility to Member countries who have problems in fully applying the provisions of the Convention.

Peru. Exceptions must be fully explained to avoid arbitrariness.

Poland. KPP: Yes.
OPZZ: Yes.

Portugal. This may enable appraisal of the States' efforts towards a gradual increase in benefits.
UGT: No.

Russian Federation. To assess the effectiveness of action taken by Members.

South Africa. BSA: No.

Spain. Given that it is an exceptional case, all these safeguards should apply.

Switzerland. UPS: No. This is a totally unrealistic approach.

Togo. Such a report would allow evaluation of the application of the instrument by the State and of future prospects.

Trinidad and Tobago. NATUC: The Member should be called upon to provide proof of the particular country's experience.

Turkey. TISK: No.

United States. An explanation of the rate would be an appropriate question for a first report under article 22, but it should not be assumed that the rate needs to be raised.
USCIB: No. Why should a developing country with less administrative resources have a greater reporting and compliance burden?
AFL-CIO: Yes.

Uruguay. National Chamber of Commerce and Chamber of Manufacturers: Yes.

Venezuela. A Member which makes use of this possibility should explain in each report the reasons for and rates of cash maternity benefits.
CTV: A Member in this position should keep the relevant ILO departments informed of any measures it adopts.

Zimbabwe. ZCTU: Yes. Implementation should be monitored and those consulted should be indicated.

This question deals with the provision of cash benefits and the benchmarks for the rate at which such benefits should be paid. Subparagraphs (a) and (b) of the question reflect two possible methods for calculating cash benefits, one based on earnings and the other based on a flat rate system. The intention was to take into account the differences in national systems of the manner of calculating benefits. The question presupposes that the methods used in countries are based on one of the two systems, but it does not exclude a combination of both.

Subparagraph (a) reflects the method used by countries with a system for calculating benefits based on earnings using two possible methods of calculating those benefits. In that subparagraph, a difference is made between benefits based on a percentage of previous earnings, which term was intended to include allowances, and a system which takes into account a portion of earnings, for instance earnings without an allowance component, or earnings on which pensions are based, etc. Subparagraph (b) reflects the situation in countries which use a flat rate system, rather than one based on earnings.

The question also addresses the situation of developing countries which may not be in a position to meet immediately the standards for providing benefits under (a) or (b). Such a flexibility provision is found in many Conventions to take account of the situation of countries whose economies and social security systems are not fully developed.

Paragraph 1

The replies reflect broad agreement on the general principle that cash benefits should be paid to women during maternity leave and that those benefits should be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living. A number of replies expressed concern that the reference to "suitable standard of living" was subjective, vague or unrealizable. The Office notes that the same wording exists in Convention No. 103, that such a standard would clearly vary from country to country depending on the social and economic circumstances of the country concerned and that one of the points of reference of such a standard could be the minimum wage. Based on the replies received to this question, the Office has formulated *Point 9(2)*. This provision corresponds to Article 4(2) of Convention No.103.

Many replies to subparagraphs (a) and (b) interpreted the question as permitting a Member to choose between option (a) or (b) or to implement a combination of (a) and (b). The Office considers that either of these systems or their combination would meet the requirements of the Convention as long as their application did not give rise to discriminatory treatment. It has therefore decided to retain the text in *Point 9(3)* of the Proposed Conclusions with a minor modification to clarify "the amount taken into account for the purpose of computing benefits".

One government suggested that the question presupposed that the benefit will be payable from social insurance, since the focus was on rates of pay. The formulation of the question was broader so as to cover not only social insurance schemes but also other sources of financing benefits, whether public or private. In this regard, the issue of individual employer liability contained in Article 4(8) of Convention No. 103 was not specifically addressed in the Questionnaire. The same government also expressed concern that the resulting provision would conflict with other existing standards concerning the payment of maternity benefits. The Office considers that such a conflict would exist only if it resulted in a lowering of such benefits. The Office considers that the method set out in subparagraph (a) would comply with the maternity protection provisions of the Social Security (Minimum Standards) Convention, 1952 (No. 102). To the extent to which the flat rate method in subparagraph (b) could result in a lower amount of benefits being paid than those provisions of Convention No. 102, the question of compatibility may well arise. The Office has not proposed any changes to the text to take account of this comment, leaving it to the Conference to consider its implications. The Office, however, notes that in addition to meeting the standard set in *Point 9(2)*, the wording "appropriate amount" qualifies the flat rate benefit to be paid.

There was some support in the replies for leaving the income-replacement provisions to national law and practice so that the new Convention would be more ratifiable. Other comments suggested the need for flexibility to combine social security schemes and employer-financed benefits. Some other replies considered that the detailed proposals contained in subparagraphs (a) and (b) could have unintended labour market effects, such as disincentives to employ women or increased labour costs leading to an overall decrease in employment. There was, however, wider support for a method of income-replacement based on earnings.

The Office's formulation in *Point 9(3)* therefore does not address how cash benefits are to be paid nor does it prescribe qualifying conditions. These are left to national laws and regulations and other means. The provision in *Point 9(3)* draws upon Article 4, paragraph 6, of Convention No. 103 with respect to one method of computing benefits, but includes other methods not provided for in that Convention.

Paragraph 2

Although the majority of replies did not object in principle to a periodic review, some replies questioned the reasonableness of such a provision, particularly for those countries which already provide benefits at a level of 100 per cent or even two-thirds of previous earnings. It was also questioned whether such review should be periodic or as necessary.

Other replies raised the problem of consultation, citing administrative difficulties if such periodic examination is to be linked to reporting requirements under the Convention as well as the fact that many schemes, particularly privately-run schemes, are not subject to such scrutiny. One government considered that such a provision should be included in the Recommendation.

Taking account of the replies received, the Office has formulated the text in *Point 13* adding the word "appropriateness" to introduce the necessary flexibility.

Paragraphs 3 and 4

The question in paragraph 3 raised concerns which were reflected in the replies suggesting that such a provision might well impose greater obligations on developing countries if, for instance, sickness benefits were paid at 100 per cent of the employee's wage. One government considered the question presupposed a social insurance system with a focus on rates of payment and a comparison between paid maternity and sick leave. Other replies objected to the link to sickness benefits and considered the provision too prescriptive. A few replies considered the phrase "Members whose economy and social security system are insufficiently developed" to be unclear and felt that the exception would impose a double standard. Some developing countries considered the provision unnecessary. Despite these concerns, a strong majority of responses favoured the proposal.

Regarding the follow-up mechanism, some replies suggested that it could impose an undue burden on the resources of developing countries. Others stated that countries which could not meet the requirements of Question 9(1) should not ratify the Convention. There was none the less broad support for the inclusion of the provision, which sought to encourage the countries concerned to raise progressively the rate of benefits.

Taking into consideration the replies received, the Office has retained the formulation contained in the question in *Point 10(1)* and *(2)* of the Proposed Conclusions. Compliance with this provision is limited to the requirement contained in *Point 9(2)*. The Office notes that there is no equivalent provision in Convention No. 103, but that many ILO Conventions contain similar provisions providing for flexibility to take account of the situation of developing countries which are not able to meet immediately all the requirements of the Convention.

It is to be noted that both the economy and the social security system must be insufficiently developed in order for a Member to avail itself of this provision.

Where a woman fails to qualify for benefits referred to in Question 8 above, should she be entitled to adequate benefits out of social assistance funds, subject to the means test required for such assistance? **Qu. 10**

Total number of replies: 98.

Affirmative: 85. Angola, Argentina, Austria, Bahrain, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria, Cambodia, Cameroon, Canada, Chad, Chile, China, Colombia, Comoros, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Ecuador, Estonia, Ethiopia, Finland, France, Germany, Greece, Guyana, Honduras, India, Indonesia, Islamic Republic of Iran, Italy, Jamaica, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Republic of Moldova, Mozambique, Netherlands, New Zealand, Nicaragua, Norway, Oman, Pakistan, Papua New Guinea, Peru, Philippines, Portugal, Romania, San Marino, Saudi Arabia, Slovakia, Slovenia, South Africa, Spain, Sri

Lanka, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Negative: 5. Australia, El Salvador, Mexico, Namibia, United States.

Other: 8. Algeria, Congo, Denmark, Hungary, Japan, Lebanon, Morocco, Qatar.

Algeria. This is difficult to put into practice in countries without a system of social assistance benefits. Another solution might be to provide compensation as for illness under more flexible conditions.

Argentina. CGT: Yes. Social security should cover medical benefits for the mother and child and a minimum level of cash benefits.
UIA: Yes.

Australia. We support the provision of benefits out of social assistance funds, subject to a family means test. However, as framed, this proposal fails to recognize countries such as Australia which provide adequate social security without a social insurance scheme in place.
ACTU: Yes.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Bahrain. If a woman's right to be paid her wages during her maternity leave is not taken into account, then she should be provided with cash benefits according to the Convention.

Barbados. Benefit may be payable on the spouse's contributions in the event that the woman does not meet the requirements. Otherwise, where the means test deems it necessary, assistance funds as applicable to national regulations and practices.

Belgium. Yes with reservations. The possibility that a woman would have no right to adequate benefits should gradually be eliminated.

Botswana. But this should depend on the level of development of a particular country or affordability.

Brazil. CNF: Equal to at least the minimum for maintenance.

Bulgaria. Depending on the actual situation in each country.

Canada. CEC: No. Question not appropriate in the context of a Convention on labour standards.

Chile. CPC: Only to medical benefits.

Colombia. This depends on the possibilities of the social or public assistance systems of individual countries.
CGTD: If a woman fails to qualify for benefits because she is unemployed, the State should provide her with those benefits listed in Question 8, which should be charged to the social assistance funds.

Comoros. Social assistance funds have not yet been established in Comoros.

Congo. The instrument should apply to all employed women without distinction.

Denmark. She should be entitled to other social assistance.

Dominica. CSA: Yes.

DAWU: Where applicable.
DTU: Yes.
WAWU: Yes.

Ecuador. In the absence of entitlements on any previously established grounds, she must be granted social assistance.

National Federation of Chambers of Industry of Ecuador: Yes. Social assistance should be state-funded.

UGTE: Yes. Social security should protect maternity, irrespective of the woman's employment status.

Egypt. Federation of Egyptian Industries: Yes.

Egyptian Trade Union Federation: Yes.

Ethiopia. Other means should be devised in consultation and agreement with employers' and workers' organizations, in accordance with national laws and regulations.

CETU: Yes. If that is the only solution possible.

Finland. TT, LTK and Federation of Finnish Enterprises: Not automatically. The conditions for the entitlement to benefits out of social assistance funds should be left to member States to decide.

France. CNPF: Yes. For benefits in kind.

CFDT: Yes. This measure could favour women with low incomes.

CFTC: Yes. To ensure all pregnant women and those with a young infant a minimum living wage.

Germany. Other benefits, in addition to those referred to in Question 8 and social assistance benefits, should also be considered.

Ghana. NCWD: Yes.

Guyana. An unemployed woman can receive benefits based on her employed spouse's contributions.

Honduras. Subject to the social security of each member State.

Hungary. It is justified to extend the circle of means-tested social benefits to women who are pregnant or have recently given birth.

India. National Front of Indian Trade Unions: Yes. Women should get assistance from the welfare fund according to the rules of the organization. Employees' organizations may also grant assistance from their welfare fund.

Indonesia. Provided as a matter of right according to the maternity conditions.

Iraq. General Federation of Trade Unions: Yes.

Japan. The meaning of "social assistance funds" is unclear. Nevertheless, the benefits referred to in Question 8 should be provided on the basis of systems established by each Member in accordance with their individual situations. It is inappropriate to stipulate in the Convention specific measures for cases where the conditions required by each system are not fulfilled. It is sufficient to stipulate in the Recommendation that some measures should be taken. There should be no provision beyond this.

JTUC-RENGO: Yes.

Jordan. Federation of Jordanian Chambers of Commerce: No.

Republic of Korea. Means should be prepared to complement the social insurance system. How the benefits are paid under the system and those covered by the schemes should be determined by the specific conditions of each country.

Lebanon. Subject to the availability of social assistance funds and rules governing their use. This item should be moved to the Recommendation.

Lithuania. Lithuanian Workers' Union: Yes. Adequate benefits from social assistance funds must be available, because unemployment is so high.

Malaysia. If such funds are available.
MAPA: No.
MEF: No.

Mauritius. MEF: Not appropriate.

Mexico. Not all national social assistance systems make provision for the granting of cash benefits. The majority of systems provide benefits in kind, such as medical, hospital and pharmaceutical care.

Morocco. Where available.
FCCIS: Yes.
CDT: Yes.

Namibia. Only persons that qualify and contribute.
NEF: Yes. Social assistance funds should be earmarked for that purpose, otherwise there is a risk of draining other funds.
NUNW: Yes. Because she is contributing to the funds.

New Zealand. The level of adequate benefits and any means tests should be decided by the member States' governments, in accordance with national laws and regulations.

Oman. As long as the need for such assistance has been substantiated.

Pakistan. PNFTU: Yes.

Papua New Guinea. If the Convention will cover all working women.

Peru. CUT. The wording in Article 4(5) of Convention No. 103 should be maintained.

Philippines. If the government can afford to fund such benefits.

Poland. KPP: Yes.
OPZZ: Yes.

Portugal. To the extent that the national situation permits.
CIP: The fixing of benefits and the manner of their financing are not matters that should be included in a Convention.
CGTP: No.

Qatar. These funds should be either governmental funds that provide benefits to the categories in need, or non-profit funds with their own rules and regulations under which they provide assistance to specific individuals and categories according to terms defined by the fund itself.

South Africa. BSA: The normal rules of the social security fund/provision should apply.

Spain. Article 4(5) of Convention No. 103 already makes provision for this case.

Sri Lanka. Most countries have no such system.

Switzerland. For women with low incomes.

UAPG and CP: This falls in the domain of general social assistance, rather than provisions to cover loss of earnings.

VSA: Yes. Basic provisions for the financing of income benefits should be established. The text of point 20, under "FINANCING OF BENEFITS", should be included in the Convention.

Tunisia. Such a guarantee should be included in the Recommendation.

Turkey. TISK: Yes. Where such funds exist.

United Kingdom. Yes, subject to the qualifying conditions provided for in national legislation.

United States. This should be decided by national law and practice.

AFL-CIO: Yes. Public benefits should be available to supplement or, as necessary, substitute for employer-provided benefits.

Venezuela. CTV: If a woman has an employer, she should be entitled to cash benefits sufficient to meet any necessary expenses.

Viet Nam. It depends on the situation of the country. It should be a recommendation, rather than an obligation.

Most replies from governments, as well as employers' and workers' organizations, expressed broad support for this provision, which recalls the provision of Article 4(5) of Convention No. 103. Some respondents suggested that social security should provide benefits to a woman on maternity leave, irrespective of her employment status. Others disagreed, stating that only those workers who had contributed or otherwise qualified should receive social assistance. Some replies stated that the ability to pay such benefits should be subject to the existence of social assistance funds, the rules for their use and the economic circumstances of each country. Several replies emphasized that the level of benefits should be determined pursuant to national law and practice. The question was raised as to whether such assistance might be provided as benefits in kind.

The proposal as formulated in *Point 9(4)* of the Proposed Conclusions indicates that the entitlement to benefits from social assistance funds would apply to women who do not meet the conditions to qualify for cash benefits under national laws and regulations or other means referred to in *Point 14*. See *Points 9(1)* and *14* in this regard. Concerning the question raised about benefits in kind, the Office is of the view that such a type of benefit is not contemplated by the requirement to provide cash benefits.

Medical benefits

Should a woman be entitled to prenatal, confinement and postnatal care, as well as hospitalization care, when necessary? **Qu. 11**

Total number of replies: 105.

Affirmative: 96. Algeria, Angola, Argentina, Australia, Austria, Bahrain, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Greece, Guyana, Honduras, India, Indonesia, Islamic Republic of Iran, Italy, Jamaica, Jordan, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Mexico, Republic of Moldova, Mozambique, Netherlands, New Zealand, Nicaragua, Niger, Pakistan, Papua New Guinea, Peru, Philippines, Portugal, Qatar, Romania, Russian Federation, San Marino, Saudi Arabia, Seychelles, Slovakia, Slovenia, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Negative: 2. Kenya, Namibia.

Other: 7. Hungary, Japan, Morocco, Myanmar, Norway, Oman, South Africa.

Argentina. CGT: Yes. These benefits, even if not guaranteed by legislation in force, should be provided by social security, without exception.
UIA: Yes.

Australia. It is appropriate that there is no suggestion as to how medical care must be funded. The benefits should be provided in accordance with national law and practice.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Bahrain. This would be a form of social security provided by the State with a participation by the employer.

Barbados. The public health care system should meet these requirements. In countries where this is inadequate, alternative provision should be made to finance same.

Belgium. See Question 8. The costs of maternity should be reduced to a minimum or even totally reimbursed. With a view to the economic conditions in each country, the text could be rephrased to incorporate the notion that such care could be progressively included in women's entitlements.

Brazil. In accordance with the legislation of each member State.
CNF: In accordance with Convention No. 102.

Cameroon. Responsibility for payment should be specified.

Canada. CEC: No. It is not appropriate within a Convention on labour standards.

Central African Republic. These benefits should be limited to the period of maternity leave defined in law or in collective agreements.

China. These are minimum protection measures. However, the content of care should be regulated to avoid undue expenses.

Colombia. Health care should be complete, appropriate and adequate. A worker should be given the appropriate medical benefits at all stages of her pregnancy to ensure her health and that of her child.

Comoros. As long as these benefits are not paid by the employer.

Congo. Within the framework of social protection of employed women with a view to giving them the best.

Croatia. The words "when necessary" should be excluded.

Czech Republic. UZS ČR: Yes, even in cases where the woman does not pay health insurance. These cases should be guaranteed by the State.
ČMK OS: Yes, this should not be restricted only to essential cases.

Denmark. In accordance with the ordinary national health system.

Dominica. CSA: Yes. These should be provided at a minimal fee.
DAWU: Yes, as well as insurance coverage as far as possible.
DTU: Yes.
WAWU: Yes.

Ecuador. CONAMU: In addition to these rights, she should also be entitled to information, education, family planning, timely cancer screening, prevention and treatment of sexually transmitted diseases, haemorrhages and pre-eclampsia. The right to receive emergency treatment should also be included.
UGTE: Yes. Also medical assistance for her newborn child.

El Salvador. If these are indispensable and necessary from the medical point of view.

Ethiopia. Should be handled by the conditions set in national laws, collective agreements and other instruments.
CETU: Yes. That is the very idea of both the Convention and Recommendation.

Finland. TT, LTK and Federation of Finnish Enterprises: This should be left up to the individual countries to decide.

France. CFTC: Yes. Give wide definition to the care to which pregnant workers or those who have recently given birth have a right.

Ghana. This is to ensure that female workers recover fully within the stipulated leave period to return to work on time.
GEA: No.

Honduras. Provided for by each country's social security in respect of medical care.

Hungary. The present text of the Convention may be preserved because it prescribes medical benefits that include the elements concerned.

India. This is absolutely necessary so as to ensure a complete recovery of the mother and proper care of the infant.
National Front of Indian Trade Unions: Medical benefits should be available at all three stages, but hospitalization should be available for at least 15 days between confinement and childbirth. It should be limited to two children.

Indonesia. The instrument should include the freedom of choice between a public and private hospital as mentioned in Article 4(3) of Convention No. 103.
APINDO: Yes. Depending on bipartite agreement.

Iraq. General Federation of Trade Unions: Yes.

Jamaica. JEF: Yes, subject to a medical examination.

Japan. A woman should be entitled to such care. However, it is not necessary to stick to benefits in kind. It should also be permitted to provide cash to help a woman with the medical expenses, separate from the cash benefits for maintenance of living.

NIKKEIREN: These must be applied in accordance with the scope and methods stipulated by national laws and regulations.
JTUC-RENGO: Yes.

Kenya. This would be very costly, especially to developing Members.

Republic of Korea. A broad range of medical services should be provided in relation with childbirth, as far as financial conditions and the social security system of each country allows. For countries which cannot afford the services, a provision regarding a temporary reservation should be prepared.

Malaysia. Subject to certain limitations, at the ratifying country's discretion.
MAPA: No. Employers should not be liable for medical expenses incurred from maternity.
MEF: No. Female employees should bear the cost of pregnancy and confinement.

Mali. Effective coverage should be ensured during all risk periods.

Mexico. From the time the pregnancy is certified.

Republic of Moldova. Such care should be provided free of charge.

Morocco. The current social security system does not cover medical treatment costs. A woman should be entitled to free medical treatment in hospitals in case of need and where no health coverage scheme provides her with the medical care proposed above.
FCCIS: To be negotiated between the social partners (collective agreements).
CDT: Yes.

Mozambique. OTM: The medical benefits should comprise all necessary care.

Myanmar. Female government employees covered by social security are entitled to benefits.

Namibia. Maternity benefits should not include medical benefits. The latter should be provided under another scheme.
NEF: Yes. Either through private funding or state funding.
NUNW: Yes.

Netherlands. The levying of a personal contribution (cost-sharing) should be permitted and the medical care should be necessary in connection with the pregnancy and/or delivery.
FNV: Cost-sharing should not be imposed during hospitalization for confinement.

New Zealand. The specific entitlements for, and qualifying criteria to obtain, medical benefits, are a question for individual Member governments. There should be no mention of these benefits in any instrument adopted.
NZEF: Whether a woman is paid for time off for medical visits connected with her pregnancy is a matter for agreement between the employer and employee. Agreement in such circumstances is unlikely to be withheld.

Norway. Such requirements are assumed to be unproblematic for Norway.

Oman. All possible forms of care are provided free of charge in all hospitals before, during and after confinement.

Peru. CUT: Services should be provided by social security medical services or by private medical services if they are better than public ones.

Poland. KPP: Yes.
OPZZ: Yes.

Portugal. CIP: The definition of medical benefits is a matter for member States and should not be included in a Convention.

UGT: A woman's right to hospitalization for maternity should always be recognized.

Romania. Women should have the right to medical benefits, in the form of effective medical services, where member States have a national health care system, or cash benefits used for medical assistance, supplementary to those referred to above. Free medical services throughout pregnancy and the postnatal period, obstetrics-gynaecological emergency services, infant care, as well as a system of family planning and sex education centres, financially accessible to targeted groups, and free cancer-screening units for women are all considered necessary.

South Africa. The Convention should be more clear regarding the responsibility for ensuring care, i.e. whether it lies with the employer or the State.

BSA: No special treatment should apply.

Spain. Consideration should be given to Article 4(3) of Convention No. 103, which states that "freedom of choice between a public and private hospital shall be respected".

Sweden. It should be considered whether medical benefits in connection with confinement and preventive care should be provided free of charge or at a certain maximum rate. The woman's own medical costs should be kept to a reasonable level, so as to make care available to all.

Switzerland. UPS: These questions go beyond the framework of labour relations.

Trinidad and Tobago. But the particulars and means to give effect require careful study.

United States. Maternity should be treated the same as any other disability.

Zimbabwe. The employer should also shoulder part of the financial burden unless the medical aid systems in place cater for maternity issues.

An overwhelming majority of replies from governments, as well as workers' and employers' organizations, supported inclusion of this provision, which recalls Article 4(3) of Convention No. 103. It differs from that Article in not retaining the qualification regarding freedom of choice of doctor and hospital.

Report V(1), *Maternity protection at work*, noted that the provision and funding of medical benefits varied widely from country to country. Replies to the questionnaire confirmed that in many countries maternity care is commonly provided through public health or social security systems. The Office therefore felt that a general provision on medical benefits should take account of the different approaches used in member States. The provision, as formulated in *Point 9(5)* of the Proposed Conclusions, would leave the necessary flexibility to meet the particular circumstances within each country regarding the means of implementation.

Some replies referred to the specific components of the medical benefits to be provided. These are discussed under Question 18 below. A number of comments referred to the cost or financing of medical benefits. Some concerns were raised regarding the employer's liability for medical expenses. Financing of benefits is discussed under Question 19 below.

PROTECTION OF EMPLOYMENT

Qu. 12(1) *Should it be unlawful for an employer to terminate the employment of a woman who is pregnant, absent on maternity leave or additional leave as referred to in questions 5 and 7 above, and during a period following her return to work after such leave, to be prescribed by national laws and regulations, except on grounds unrelated to the pregnancy or childbirth and its consequences or nursing?*

Total number of replies: 105.

Affirmative: 103. Algeria, Angola, Argentina, Australia, Austria, Bahrain, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Greece, Guyana, Honduras, Hungary, India, Indonesia, Islamic Republic of Iran, Italy, Jamaica, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Mexico, Republic of Moldova, Morocco, Mozambique, Namibia, Netherlands, New Zealand, Nicaragua, Niger, Norway, Oman, Pakistan, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, San Marino, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United States, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Other: 2. Japan, United Kingdom.

Algeria. This protection should cease upon return to work, since it is impossible to conceive of termination of employment on grounds related to the consequences of childbirth.

Argentina. CGT: Yes. Where a woman has been dismissed as a result of her pregnancy, legislation should provide for her reinstatement at work or, failing this, payment by the employer of a large sum in compensation.

UIA: Yes. Protection should only apply to grounds related to maternity.

Australia. The preferred option would be to make it unlawful to terminate employment for reasons relating to, or including, pregnancy, rather than not allowing termination around the time of pregnancy. There may be some value in completely prohibiting termination of employment during pregnancy and for a prescribed period of time after the birth occurs, as it is possible that such a measure would lessen termination on discriminatory grounds by allowing a female employee time to reassert herself in the workplace. However, a restraint of this nature on the employer's ability to structure the workplace would seem too great, especially as there could be any number of non-discriminatory reasons for terminating employment.

Austria. The grounds for lawful termination should be restricted to certain exceptional cases; otherwise, the danger exists of employment protection becoming meaningless. More-over, termination should be subject to the consent of the competent authorities. Paragraph 4(1) of Recommendation No. 95 should be written into the Convention.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Bahrain. The employment contract during maternity leave is suspended and cannot be violated or terminated, except for reasons that are not related to the pregnancy or confinement.

Barbados. A stipulated period after maternity leave would provide added job security.

Belgium. On the basis of a medical certificate. A problem arises as to whether any additional leave referred to in Question 7 is an extension of maternity leave. This problem could be addressed in the Recommendation. Protection from dismissal could be extended from the notification of pregnancy through a certain set period following the return to work.

CNT: The prohibition of dismissal should be limited to grounds related to maternity, otherwise it could lead to discrimination in favour of mothers. The employment protection proposed here is an improvement on the provisions of Convention No. 103.

Botswana. Termination of employment on grounds of pregnancy is discriminatory.

Brazil. CNC and CNI: No. Protection of employment should be a matter for collective bargaining.

Chile. It is necessary to supplement maternal rights with a prohibition upon acts undermining the dignity of pregnant women or constituting harassment of them.

CPC: The period of exemption should be short so as not to hinder the employment of women of childbearing age.

China. China's labour law and practice have demonstrated that such provisions play an active role in protecting women's rights of employment.

Colombia. CGTD: Women who are employed on fixed-term contracts face a difficult situation if they become pregnant or are absent on maternity leave and employers do not renew their contracts. The new Convention should explicitly prohibit the dismissal of such women workers. One means of resolving this difficulty would be to prohibit the termination of employment of any woman worker during a period of not less than six months after completion of maternity leave.

Congo. In the framework of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

Czech Republic. UZS ČR: Yes, except where the enterprise ceases to exist, the period stipulated in the employment contract has expired, or the woman has been sentenced to a longer (one year) period of punishment.

ČMK OS: Yes. Giving notice should only be permitted where the employer ceases to exist.

Denmark. This is one of the most important provisions of the Convention to prevent discrimination due to pregnancy and maternity.

DA: Such provisions should exist, but they must be regulated within the rules on equal opportunities between genders.

Dominica. CSA: Yes.
DAWU: Yes.
DTU: Yes.
WAWU: Yes.

Ecuador. This must be totally prohibited.

CONAMU: The grounds for exceptions should be clearly established, with medical, psychological and social reports to rule out any connection with the pregnancy or childbirth and its consequences or nursing. Postnatal depression and carrying out maternal obligations are grounds in women's favour and prohibit dismissal.

National Federation of Chambers of Industry of Ecuador: Any violation of the guarantee of job security could be settled using a compensation procedure.

UGTE: Yes. Job security in these circumstances deserves special attention.

Egypt. Even when an absence following her return to work is considered as sick leave.

Ethiopia. This is one of the fundamental rights of women workers and an element of minimum labour conditions that should be respected by the labour partners.

Finland. TT, LTK and Federation of Finnish Enterprises: No. Such provision could be in a Recommendation.

France. CGT-FO: Yes. Legislation should prohibit the termination of employment of a woman within one year following her return to work, except on grounds unrelated to the pregnancy or childbirth and its consequences or nursing.

Germany. Protection against termination of employment should apply even to grounds unrelated to maternity. Any termination that is allowed in particular and exceptional cases should be subject to prior approval by the competent authority. Otherwise, it might be possible to find a way around the protection.

Ghana. Termination of employment on grounds unrelated to pregnancy or childbirth is rational.

India. Bharatiya Mazdoor Sangh: Yes. During a period of one year from confinement, termination should be treated as unlawful if it is related to leave for illness and nursing arising out of maternity.

Iraq. General Federation of Trade Unions: Yes.

Italy. The length of this prohibition should be precisely determined. In Italy, this provision for prohibition lasts from the beginning of the pregnancy until the child is 1 year old.

Jamaica. JEF: No. Moral persuasion should be used, rather than laws and regulations.

Japan. The provision in the Convention should be limited to a minimum scope, for example, during maternity leave and the period provided by national laws or regulations. Provision concerning additional leave beyond this should be in the Recommendation.

NIKKEIREN: The period covered by this provision should be limited to pre- and postnatal leave and the 30 days following the postnatal leave. Application to a nursing period and additional leave exceeds minimum protection.

JTUC-RENGO: Yes.

Lebanon. This is not provided in national legislation. However, abuse of the right to terminate employment on the part of both employer and employee is considered grounds for compensation.

Lithuania. Lithuanian Workers' Union: Yes. Such dismissal causes serious moral and material damage.

Unification of Lithuanian Trade Unions: No.

Mexico. The worker's entitlement to return could be subject to a maximum period of absence.

Republic of Moldova. Under national law, the prohibition of dismissal lasts from pregnancy until the child is 3 years of age

Mozambique. OTM: Any act of dismissal against a woman, because of her pregnancy or during maternity leave, should be prohibited.

Namibia. NEF: Yes. All social partners should have a periodic input into such legislation, because of the possible influence of demographics and labour market employment patterns.

Netherlands. FNV: This protection would be improved if the imposition of sanctions were included. See also Article 11(2)(a) of the CEDAW.

New Zealand. Member States should be able to set conditions in national law under which employers with valid reasons would be able to refuse to grant maternity leave or keep a position open while the employee is on leave. Such refusal should not be treated as a dismissal related to pregnancy, even if the employee resigns as a result.

Norway. Under national law, pregnancy shall be regarded as the real reason for any notice given while the employee is pregnant, unless other valid reasons are given. An employer will have to produce evidence for terminating employment. During leave, the protection against dismissal is absolute.

Oman. Providing that the use of such a right is not abused and the requirements and the interest of work are ensured.

Papua New Guinea. If conditions prescribed by national legislation are not met.

Poland. Under national law, such termination of employment may only occur in the event of declaration of bankruptcy or liquidation of the employer.

Portugal. The prohibition of dismissal may be ensured by placing the burden of proof upon the employer to prove the motives leading to dismissal.

CIP: It is considered inappropriate for the Convention to include a prohibition on dismissal. The matter should be left to the legislation of member States.

UGT: This rule should take effect from the moment the woman becomes pregnant or the employer becomes aware of the pregnancy. It should be extended beyond the return of the female worker. If nursing is regarded as one of the grounds which do not justify dismissal, it should be included in the scope of protection. The period of protection should not be left to national legislation to determine.

Romania. Termination of employment should only be permitted in extraordinary circumstances unconnected with the woman's condition and with the approval of the competent national authority, once the employer has outlined the reasons for her dismissal in writing. Necessary measures should be taken to protect women against illegal termination.

National Council of Private Small and Medium-sized Enterprises: Yes. Non-compliance should be penalized through fines of a sufficient amount.

Saudi Arabia. Such dismissal could harm the woman's mental health, which could, in turn, harm the child's health.

South Africa. BSA: Employees who fail to fulfil their contracts should be treated accordingly. No special provision should apply in the case of maternity leave. Employers cannot be expected to keep positions open indefinitely in the event of additional leave. The position of SMEs requires special attention.

Switzerland. Such protection exists in Switzerland. None the less, an employment contract can be revoked for just cause. Just cause includes all circumstances which, in good faith, would preclude requiring the person who has terminated the contract to continue the employment relation. The exact motives which gave rise to the dismissal and the party on whom the burden of proof resides have to be determined with precision.

Syrian Arab Republic. Physiological reasons or illness-induced leave are beyond the woman's control, and the law protects her from arbitrary dismissal.

Tajikistan. National law also prohibits discrimination in hiring and reduction of pay on grounds related to pregnancy or having children.

Togo. Such a prohibition in national legislation should apply to employers.

Trinidad and Tobago. NATUC: Yes. There is the perception among employers that pregnancy facilitates the reduction of productivity in the workplace.

Turkey. TISK: No. Any severe restrictions on the employer's ability to respond rapidly to market requirements could become an extremely heavy burden for the undertaking. The continuity of the employment contract may depend on factors outside the employer-employee relationship. It would therefore damage industrial relations to regard the termination of the employment contract as unlawful in all events.

United Kingdom. It should be unlawful for an employer to dismiss an employee, or select her for redundancy in preference to other comparable employees, solely or mainly because she is pregnant or has given birth, or for any other reason connected with her pregnancy or childbirth.

United States. In the United States, adverse employment decisions based on pregnancy are a form of illegal sex discrimination.

AFL-CIO: The Convention should provide that it is unlawful for an employer to terminate a woman's employment because she is pregnant or because the employer believes the woman is or will become pregnant or would be absent on maternity leave or other period of childbirth-related leave, or because of her status as a mother.

Viet Nam. It is necessary to protect women's employment and avoid unfair dismissals.

Zimbabwe. ZCTU: As per Article 4(1) of Recommendation No. 95.

This provision garnered almost unanimous support among governments as well as employers' and workers' organizations. Protection against dismissal was considered to be one of the fundamental elements of maternity protection. The proposed provision has been included as *Point 11* of the Proposed Conclusions.

This Point contrasts with Article 6 of Convention No. 103 in two principal ways. First, it provides a longer period of protection, to include the period of pregnancy, absence on maternity leave or additional leave, and a period following the woman's return to work. It is important to note in this context that Article 5 of the Termination of Employment Convention, 1982 (No. 158) provides that pregnancy, absence from work during maternity leave and family responsibilities do not constitute valid reasons for termination. Second, the prohibition of dismissal is no longer absolute. Termination of employment would be permitted on grounds "unrelated to pregnancy or childbirth and its consequences or nursing". Legitimate reasons for dismissal might include serious fault on the part of the employed woman, shut-down of the undertaking, or expiry of the contract of employment, as enumerated in Paragraph 4(2) of Recommendation No. 95. Several replies emphasized that the legitimate grounds for dismissal should be limited to exceptional or extraordinary cases or clearly stated.

Regarding the period of protection, a number of replies stated that the total length of this period should be specified, and a few replies suggested exact time periods. The Office notes that there is no uniformity in the laws and regulations in member States in this regard. *Point 8(2)* has been drafted to enable the maximum duration of any additional leave to be fixed by the competent authority. Similarly, as formulated, *Point 11* of the Proposed Conclusions leaves the period of protection following the woman's return to work to be prescribed by national laws and regulations.

A number of replies suggested measures to ensure that the right to employment protection be effectively secured. These included a requirement that the termination of employment be approved by the competent authority upon a written submission by the employer, a showing of "just cause" by the employer, placing the burden of proof upon the employer in the event of a dispute, or imposing a fine upon the employer. The Office proposes to refer this matter to the Conference in view of the significance of the proposal.

Should the Convention provide that a Member adopt other measures to ensure that maternity does not constitute a source of discrimination in employment? **Qu. 12(2)**

Total number of replies: 104.

Affirmative: 93. Argentina, Australia, Austria, Bahrain, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Greece, Guyana, Honduras, India, Indonesia, Islamic Republic of Iran, Italy, Jamaica, Jordan, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Mexico, Republic of Moldova, Morocco, Mozambique, Namibia, Netherlands, Nicaragua, Niger, Norway, Pakistan, Papua New Guinea, Peru, Philippines, Poland, Qatar, Romania, Russian Federation, San Marino, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad and Tobago, Ukraine, United Arab Emirates, United Kingdom, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Negative: 4. Kenya, Oman, Tunisia, Turkey.

Other: 7. Angola, Congo, Hungary, Japan, New Zealand, Portugal, United States.

Angola. Such measures are necessary for countries with discriminatory legislation.

Argentina. Provision of nursery facilities.
CGT: Details of implementation are a matter for legislation or agreements. Our national legislation provides for payment of compensation in cases of discriminatory dismissal.
UIA: No.

Australia. The Convention should provide for Members to undertake to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

Austria. Such as reintegration assistance and measures ensuring greater compatibility between work and family responsibilities.

BAK: Statutory provisions with regard to equality of treatment. Discrimination on grounds of maternity is often found in probationary employment, limited duration employment and in matters relating to promotion.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Bahrain. Working mothers' right to employment should not be affected; others should not be given priority in employment.

Barbados. To protect a pregnant woman when an employer changes her work assignment or station because of her appearance.

Belgium. Unless there is agreement on the details concerning these measures, it might be better to include this provision in the Recommendation.

CNT: Inadequate measures could compromise equality of treatment between men and women.

Benin. Provide significant sanctions in the event of non-compliance with the prohibition mentioned in 12(1).

Brazil. CNF: Criminal proceedings against persons committing discrimination; compensation for moral risks and reinstatement in employment of women workers who have lost their jobs as a result of such discrimination.

Cambodia. National legislation should clearly stipulate that married women can have access to employment without discrimination.

Canada. Changing a condition of employment due to pregnancy or maternity leave without the worker's written consent is normally prohibited in Canada. Other measures could also provide for reassignment of pregnant women and nursing mothers under health and safety laws.

CEC: No. The Canadian Charter of Rights and Freedoms, which provides the right to equal protection and benefit of the law without discrimination, must be reinforced.

CLC: Reassignment of pregnant and nursing workers under health and safety laws.

Chile. Measures should include child care as a social responsibility; leave for either parent in case of the child's sickness; prohibition of pregnancy testing; providing coverage to self-employed workers and workers without contracts, when eligible; wage equity; and all measures necessary to ensure that a woman worker's position, working conditions or remuneration do not deteriorate or decline due to her pregnancy.

CPC: Allow pregnant women to take on replacement, temporary or similar work so as not to leave them at the mercy of the informal sector or prostitution.

China. The Convention should specify the "other measures".

Colombia. An inspection system.

Comoros. Employment contracts should not contain non-maternity or celibacy clauses. Sex should not be a criterion for employment.

Congo. The existing arrangements are currently favourable to maternity protection.

Czech Republic. ČMK OS: Council Directives 75/11/EEC, 76/207/EEC, 79/7/EEC, 86/378/EEC and 86/613/EEC, pertaining respectively to equal remuneration, equal treatment in employment, equal treatment in questions of social security, equal treatment in occupational systems of social security, and the protection of self-employed women in the course of pregnancy and maternity, should be used as a basis.

Dominica. CSA: Yes.
DAWU: Yes.
DTU: Yes.
WAWU: Yes.

Ecuador. Protection could include fines upon the employer and compensation for the mother.

CONAMU: International Conventions should prevail over national legislation and collective and other agreements.

UGTE: Measures could include penalties for employers' noncompliance, periodic evaluations of employers' treatment of female staff, and compensation to women denied the right to return to work. Supervisory mechanisms are important.

Egypt. All possible measures must be taken to ensure equality in employment.

Ethiopia. Implementation of the fundamental rights of women workers.

Finland. In Finland, it is prohibited to place a worker in a different position due to pregnancy or childbirth or parenthood, obligation to provide for the family or to some other reason related to sex.

TT, LTK, Federation of Finnish Enterprises and KT: No.

France. In France, an employer cannot take a woman's pregnancy into consideration when refusing to hire, cancelling an employment contract during the trial period or changing a job assignment.

CNPF: No.

CFDT: Yes. Certain working conditions are unsuitable for pregnant women, but remedial measures should not give rise to discrimination.

CFE-CGC: Yes. Measures prohibiting direct or indirect inquiry regarding the possible pregnancy of a female job candidate.

CFTC: Yes. No pregnancy test at the time of hiring, no questions regarding the number of children desired.

CGT-FO: Yes. Prohibit, as a condition of employment, a pregnancy test, gynaecological examination or medical certificate attesting to sterilization. Prohibit any clauses annexed to an employment contract restricting the pregnancy of an employed woman.

Germany. The prohibition of discrimination must also apply at the job application stage. While legislation is necessary to ensure equality of treatment, the costs facing employers in small businesses must be taken into account. Legislation is needed to provide for reimbursement of costs.

BDA: Member States should ensure that the employment relationship is not made more difficult by excessive maternity protection measures which are ultimately disadvantageous for women.

DAG: Ensure that the woman can return to her previous post and that protection against termination continues after the woman's return to work.

Honduras. To be covered in the member State's national legislation.

COHEP: Financial sanctions against the employer. Measures to establish the specific causes of discrimination on grounds of maternity. Measures should be specified in a clear and concrete way to prevent doubt or misinterpretation.

Hungary. National legal regulations or other employment policy measures may declare the general prohibition of discrimination, or prescribe special prohibitions and positive discrimination relating to women giving birth to or raising children.

India. These measures should be made flexible and left to the member States to implement according to their national laws and practices.
National Front of Indian Trade Unions: Yes. To strengthen application of the Convention. Adoption of other measures are necessary, when Member countries have many unprotected workers, so as to avoid discrimination.

Indonesia. APINDO: No. Maternity is well accepted by other workers.

Islamic Republic of Iran. Any measures for the benefit of employed mothers should not be considered as a source of discrimination in employment.

Iraq. General Federation of Trade Unions: Yes.

Italy. CONFINDUSTRIA: Should be handled through collective bargaining or national legislation.

Jamaica. JEF: There should be no discrimination in employment, but prior to employment, there is no obligation on the part of employers.

Japan. This provision should be included in the Recommendation rather than the Convention. Appropriate measures to avoid discrimination differ greatly from country to country.
JTUC-RENGO: Yes.

Kenya. Measures taken to give effect to the Convention would suffice.

Lebanon. Provided the possible sources of discrimination are specified.

Lithuania. Confederation of Lithuanian Entrepreneurs/Employers: Yes. The State must compensate the employers for losses incurred owing to the illness of women workers.
Lithuanian Workers' Union: Yes. Through inclusion in labour legislation.

Malaysia. MAPA: Yes. Through national laws and collective agreements.
MEF: No.

Mali. Better legislation regarding gender. More attention to workers with family responsibilities.

Mexico. Subject to national conditions.

Morocco. The elimination of discrimination in employment based on pregnancy, childbirth or nursing should be one of the basic principles to be enshrined by the Convention.
FCCIS: Yes.
CDT: Yes. Other more effective measures: higher fines or even penal sanctions.

Mozambique. The Convention should reflect a woman is entitled to employment in the same circumstances as men.
OTM: Through national labour legislation.

Namibia. NEF: Yes. Affirmative action programmes in the workplace.

Netherlands. Discrimination on the grounds of motherhood is prohibited in the Netherlands, unless the said discrimination is intended to protect the woman.

New Zealand. As long as Members are free to choose the form and type of other measures to be adopted.

Oman. Each Member should have the freedom to take such measures.

Papua New Guinea. National laws and regulations must provide full protection for all.

Peru. Discrimination in employment based on maternity is widespread in the world of work.
CUT: All forms of hostility towards women workers should be prohibited, especially those based on maternity.

Portugal. Obligations to ensure protection of employment may give rise to discrimination against women with respect to their access to employment.
CIP: To be left to the legislation of member States.
CGTP: Yes.
UGT: The Convention should require the employer to prove, in the case of complaint, that cessation of the employment contract for any reason — not only dismissal — was not due to the legitimate exercise of rights related to maternity protection in the broadest sense.

Romania. Measures banning discrimination should be stated expressly in national labour legislation, including special references to maternity. A ban on dismissals is desirable.

Russian Federation. Under national law, these measures include an obligation to find new employment for a woman dismissed as part of a total liquidation of the enterprise.

San Marino. Seniority, career and occupational skill development, vocational training.

Slovakia. Protection of women on the labour market, equality for women and men with regard to parental leave, equality in access to employment, equality of remuneration.

South Africa. The instruments should consider a broadening of the definition of pregnancy to include, for example, anticipated pregnancy and termination of pregnancy, to improve the employment protection of pregnant women and other women of childbearing age.

Spain. Prohibition to modify working conditions or the content of a woman's contract except for reasons which are not discriminatory. All Member countries should make it unlawful to dismiss a woman worker on the grounds of pregnancy or maternity.
CIG: Prohibit any mobility, either functional or geographical, contrary to the mother's wishes during the year following confinement.
CCOO: Reversal of the burden of proof. The employer should prove that the dismissal or sanction is unrelated to the pregnancy.

Switzerland. Prohibit discrimination in employment, including with regard to promotion; provide for appropriate sanctions; lessen the burden of proof required of women; provide suitable protection against unfair dismissal (retaliatory discharge).
VSA: Measures to prevent maternity becoming a source of discrimination, must be defined in specific terms and could be included in the Recommendation.

Trinidad and Tobago. NATUC: Yes. Ensure that all types of discrimination are eradicated, especially those related to women's reproductive role.

Tunisia. Additional protection may be provided in national legislation. Certain measures could be mentioned in the Recommendation.

Turkey. The term "a source of discrimination" is far too broad.
TISK: Yes.
TÜRK-IŞ: Postnatal maternity leave must also be applied to the father. The matter must be dealt within the framework of Convention No. 156.

United Kingdom. Protection from detriment should be provided for. Under United Kingdom legislation, women who are pregnant, have recently given birth or are breastfeeding have additional protection against discrimination under the sex equality legislation.

United States. Pregnancy and any pregnancy-related conditions should be a class legally protected from employment discrimination in all member States.

AFL-CIO: Yes. The Convention should provide that a Member should also prohibit maternity-based discrimination in hiring, assignments, promotion, pay and benefits, and other terms and conditions of employment; and that the Member take all steps necessary to ensure protection and enforcement of the guarantee.

Venezuela. The woman should be protected in her procreative capacity. The international organizations should provide guarantees of her right to employment and protection of that employment, as well as protection in her family life, health, pregnancy and maternity.

Viet Nam. Maternity leave should not impose excessive burdens on an employer, which would result in women being placed in a disadvantageous position. Governments should be required to help employers to pay for maternity leave through tax concessions, for example.

Zimbabwe. Paternity leave should be introduced.

A wide majority of replies supported this provision which has been included as *Point 12* of the Proposed Conclusions. This provision, which would require a Member to adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment, does not exist in Convention No. 103 and is therefore new. This provision addresses broader types of discrimination in employment than the case of discriminatory dismissal, which was considered under *Point 11*. The term "employment" includes access to vocational training, access to employment and to particular occupations, and terms and conditions of employment as defined in the Convention concerning Discrimination in Respect of Employment and Occupation, 1958 (No. 111).

A number of comments received in reply to this question raised the issue as to whether the Convention should contain a general obligation that measures be adopted in each country or whether it should contain specific obligations to adopt particular measures. Many comments noted particular measures to be taken to prevent discrimination in employment, such as the need to ensure compatibility between work and family, placing the burden of proof upon the employer in the event of a dispute, or the need for supervisory mechanisms. Others highlighted specific problems which might be addressed by particular measures, such as discrimination in promotion, the inclusion of non-maternity clauses in employment contracts, termination of contract during a probationary period, the reassignment of pregnant or nursing women when normal duties pose a health risk, and the unilateral change in a pregnant woman's work duties based upon her appearance. It was often unclear, however, whether the respondents' intent was to suggest measures to be provided in the Convention or to note examples of the types of measures that could be addressed by national legislation and practice. No specific measure was mentioned more than a few times. Therefore, the proposed provision contains a general obligation to adopt measures, leaving the specific measures adopted to be determined by the law and practice in each country.

It was suggested that the wording "other measures" be replaced by "all necessary" or "all possible measures". Considering these suggestions and the need mentioned in many replies to adopt measures suitable to national conditions, the Office has proposed the wording "appropriate measures".

Several replies stated that unless there was agreement regarding the details of particular measures, the provision should be included in the Recommendation. The Office notes that *Point 21*, as drafted, provides the possibility to specify other particular measures for possible inclusion in the Recommendation. The Conference may wish to decide which other particular measures, if any, should be included therein.

IMPLEMENTATION

Should the Convention be implemented by means of laws or regulations, except in so far as effect is given to it by means of collective agreements or in any other manner consistent with national practice? **Qu. 13**

Total number of replies: 104.

Affirmative: 96. Algeria, Argentina, Australia, Austria, Bahrain, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria, Cambodia, Cameroon, Canada, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Cuba, Cyprus, Czech Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Greece, Guyana, Honduras, India, Indonesia, Islamic Republic of Iran, Italy, Jamaica, Japan, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Republic of Moldova, Morocco, Mozambique, Namibia, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Papua New Guinea, Peru, Philippines, Portugal, Qatar, Romania, Russian Federation, San Marino, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, Sri Lanka, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Negative: 2. Angola, Croatia.

Other: 6. Central African Republic, Denmark, Hungary, Mexico, New Zealand, Spain.

Angola. National law and practice must be taken into account.

Argentina. CGT: Yes. National legislation should lay down the minimum provisions, without prejudice to any additional provisions that might be contained in collective agreements.
UIA: Yes.

Australia. The flexibility of this provision is appropriate for the promotion of maternity protection. Suggested wording may be "The provisions of the Convention should be applied by means of laws or regulations or by any other means consistent with national practice, such as court decisions, arbitration awards or collective agreements".
ACTU: Yes. Legislation in the areas of equal opportunity, anti-discrimination, industrial relations and employment should include appropriate provisions.

Austria. By means of legislation or other means consistent with national practice, such as judicial rulings, arbitration awards or general collective agreements.
ÖGB: Yes. Above all by means of laws.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Brazil. The Convention should stipulate conditions of such a nature that it can be ratified by the largest possible number of member States.
CNC and CNI: No. The law must establish a minimum level; everything else should be left to collective bargaining.

CNF: Preferably through legislation, since collective agreements are often limited in time.

Cambodia. National legislation is applicable to all, whereas collective agreements depend on the will of employers and workers.

Canada. In Canada, laws and regulations usually have precedence over collective agreements and practices. The current wording of this question creates confusion on this point.

CLC: Yes. Laws to ensure minimum protection, collective bargaining to allow improved benefits and conditions.

Central African Republic. By means of law to ensure that provisions are applicable to all.

Chile. It is advisable to establish by law minimum standards which are inalienable for the parties, who are entitled to improve upon these minimum standards. The benefits established above the minimum levels may be written into collective or other agreements.

China. Given that the Convention is a binding instrument, it is preferable that member States adopt laws or regulations to implement it.

Colombia. It should be implemented across the board to avoid any unfairness. The provisions should be included in legislation. Collective agreements only apply to part of labour legislation.

Congo. Through legislation or collective agreements.

Croatia. Only by means of laws or regulations.

Croatian Association of Employers: Yes. Implementation by means of collective agreements or any other manner consistent with national practice should be allowed.

Denmark. Both by law and agreements.

Equal Status Council: A statutory regulation will offer the best protection.

Dominica. CSA: Yes.

DAWU: Yes.

DTU: Yes. Legislative regulations are the only guarantee.

WAWU: Yes.

Ecuador. This may considerably delay application, given that Parliament's cooperation is required.

National Federation of Chamber of Industry of Ecuador: Yes. By means of law and regulations, without detriment to improvements achieved through collective agreements or practice.

CEDOC: Legislation would ensure its general application

UGTE: Yes. Laws or regulations are necessary. Collective agreements protect a small sector of the working population.

El Salvador. Yes, but in accordance with national practice and contracts clauses already provided for in legislation.

Finland. As a rule, by law.

KT: No.

France. CFTC: Yes. Laws are a preferable means to ensure minimum rights, since collective agreements do not cover all employed women.

CGT-FO: Yes. Through legislation.

Ghana. By means of legislation.

NCWD: Yes.

GEA: Yes. In the absence of any agreement, national laws or regulations should guide its implementation to ensure consistency.

Honduras. COHEP: Legislation would be preferable to collective agreements.

Hungary. Any instrument may qualify as permissible, provided that it is demonstrably suitable for promoting the implementation of the Convention and that appropriate information may be provided in the form of regular reports.

India. It should be implemented through national laws and regulations. In certain categories of workers and sectors of the economy, it should be made flexible and left to the collective bargaining agreements. Member States should be left to devise appropriate means for implementation in the unorganized sector.

AITUC: Yes, by national laws and collective agreements consistent therewith.

Bharatiya Mazdoor Sangh: Yes. For indiscriminate and universal application of Convention, it should be implemented by means of laws or regulations for minimum benefits. Freedom be given to extend more benefits than minimum by collective agreements or otherwise.

National Front of Indian Trade Unions: Yes. By legislation providing universal application with stringent penal measures providing compensation in case of breach. It may also be incorporated into collective agreements and contracts of service as a term and condition of employment.

Islamic Republic of Iran. Governments are responsible to ensure the welfare and health of their people. Implementation of this Convention should be consistent with national practice.

Iraq. General Federation of Trade Unions: Yes.

Jordan. By laws and regulations.

Amman Chamber of Industry: Yes. Through laws and regulations in order to keep the obligations and rights clearly distinct.

Republic of Korea. The provisions should take the form of national laws or regulations to reinforce effective compliance. However, member States should be allowed to comply with the standards in other ways as long as they fulfil the Convention in practice.

Lebanon. Through laws or regulations. Laws apply universally, whereas collective agreements apply only to the individuals concerned.

Lithuania. Confederation of Lithuanian Entrepreneurs/Employers: Yes, but not to the detriment of the employer.

Lithuanian Workers' Union: Yes. Its provisions should be included in legislation.

Mali. Legislation to set minimums and collective agreements to extend coverage.

Mexico. Delete the phrase "except in so far as effect is given to it by means of". In many countries, the provisions are applied through national legislation, complemented by collective bargaining.

Morocco. By means of laws or regulations or by means of collective agreements or arbitration rulings.

CDT: Legislation should provide the minimum framework, complemented by collective agreements, etc.

Mozambique. Collective agreements or national practice should not establish conditions which are less favourable than those provided by national legislation.

OTM: Through labour or specific legislation at the national level.

Namibia. NEF: Yes. Laws or regulations with collective agreements consistent with national practice to avoid conflicting situations in practice.

New Zealand. In a manner consistent with national practice.

Oman. Through national legislation.

Papua New Guinea. As long as national laws or regulations give effective protection.

Peru. Effect should be given to the Convention through national legislation. Collective agreements should be complementary.

Philippines. By means of laws or regulations.

Poland. KPP: Yes.
OPZZ: Yes.

Portugal. UGT: The effectiveness of the means of implementation in States' domestic legal systems must be safeguarded. Specifically, if the system of collective contracts means that all workers are covered, either through a national agreement which covers all sectors, or through the conclusion of sectoral agreements which achieve the same result, then this can be accepted. The law will naturally have this effect.

Romania. Application via specific laws.

Russian Federation. National legislation must be amended if it runs counter to or if it fails to take into account the provisions of the Convention.

Saudi Arabia. By means of laws or regulations.

Slovakia. First through national legal regulations with a possibility of collective bargaining.

South Africa. BSA: Ideally through collective bargaining.

Spain. This Convention should be implemented in the same way as other ILO Conventions.
CIG: Yes.
CCOO: Yes.

Suriname. ASFA: By means of laws or regulations.

Sweden. As a rule, the provisions of the Convention should be enforced by law.

Switzerland. UPS: Preferably through collective agreements.

Togo. Preferably through legislation.

Trinidad and Tobago. NATUC: Yes. It requires legal intervention since some unions have been pursuing this issue without success for years.

Tunisia. To take into account the diversity of legal instruments regulating maternity protection in member States.

Turkey. TISK: No. According to the principles of the ILO, it is not mandatory for the provisions of a Convention adopted by the Organization to be integrated into national legal provisions. It would be sufficient to apply them to working life through collective agreements or other measures. Legislative provisions should not be sought as the sole, mandatory means of implementing the Convention.
TÜRK-IŞ: Minimum protection should be provided by legislation, to be further improved by collective agreements.

United Arab Emirates. It is important to implement the Convention by laws and regulations.

United States. AFL-CIO: Provided that any and all forms of implementation must ensure that women are accorded, at a minimum, the rights, protections and benefits provided for in the Convention.

Uruguay. National Chamber of Commerce and Chamber of Manufacturers: Only by means of national legislation.

Zimbabwe. National laws should set minimum standards, then anything above that can be negotiated.

A very strong majority of governments as well as employers' and workers' organizations replied affirmatively to this question, which provides broad possibilities for means of implementation consistent with national practice. The provision has been included as *Point 14* of the Proposed Conclusions.

Many comments addressed the respective roles of law and practice. Almost one-fifth of the government replies indicated a preference for implementation through laws and regulations only. A smaller group of governments, joined by a number of workers' organizations, indicated that laws and regulations should guarantee that minimum standards and improvements might be attained through collective agreements. Both groups reasoned that laws apply universally, whereas collective agreements, which are of limited duration, cover only a portion of the employed population. Although the comments showed significant support for implementation through laws and regulations applicable to all with the possibility of improved provisions through collective bargaining, the Office did not discern a clear majority for this position.

Three governments proposed replacing the phrase "except in so far as effect is given to it by other means such as" with the word "or." The effect of such a change would be to place the enumerated means of implementation on an equal footing. Given the significant support for implementation primarily through laws and regulations, the Office has largely retained the original wording.

Two governments suggested including arbitration awards and court decisions among the other means of implementation. In keeping with the wording used in the implementation provisions of other instruments, the Office included these two terms in *Point 14*. In order to achieve consistency respecting means of implementation, the Office has included a reference to *Point 14* in *Points 9(1), 9(4)* and *10(1)* of the Proposed Conclusions.

IV. Content of a Recommendation

MATERNITY LEAVE

Should the Recommendation provide that, in the framework of the provisions of Question 5 above, Members should endeavour to extend the period of maternity leave to 14 weeks? **Qu. 14**

Total number of replies: 104.

Affirmative: 75. Algeria, Austria, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Ecuador, Estonia, Ethiopia, Finland, France, Germany, Greece, Guyana, Hungary, India, Indonesia, Islamic Republic of Iran, Italy, Japan, Jordan, Kuwait, Latvia, Lithuania, Luxembourg, Mali, Mauritius, Republic of Moldova, Morocco, Mozambique, Netherlands, Nicaragua, Niger, Norway, Pakistan, Poland, Portugal, Qatar, Romania, Russian Federation, San Marino, Saudi Arabia, Slovakia, Slovenia, South Africa, Spain, Suriname, Switzerland, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Ukraine, United Arab Emirates, Uruguay, Viet Nam, Zimbabwe.

Negative: 23. Angola, Argentina, Australia, Bahrain, Egypt, El Salvador, Ghana, Honduras, Jamaica, Kenya, Republic of Korea, Malaysia, Mexico, Namibia, Oman, Papua New Guinea, Peru, Philippines, Seychelles, Sri Lanka, Syrian Arab Republic, Turkey, United States.

Other: 6. Congo, Denmark, Lebanon, Myanmar, New Zealand, United Kingdom.

Argentina. Twelve weeks are sufficient, but the provisions should be flexible to cover particular cases specified by national legislation. An increase in the maternity leave entitlement would be a disincentive to the employment of women.

CGT: Yes.

Australia. While it is appropriate for the Recommendation to encourage a higher standard, the distinction between maternity leave (to protect the mother's health) and parental leave (to rear a child) begins to blur at about 12 weeks. Now that there is an appropriate standard addressing family responsibilities (Convention No. 156), the maternity protection standard should focus on its core aims, and not attempt to address a wider topic. Additional leave, if required for medical reasons, is addressed in Question 7.

ACTU: Yes.

Austria. Endeavours should be made to extend the period to 16 weeks.

ÖGB: Yes. Attempts should be made to extend leave to at least 16 weeks of minimum maternity leave, since the 14-week period should be included in the Convention.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Bahrain. The period provided for above is deemed excessive. No recommendation should be made for extending the period of maternity leave.

Belgium. Fourteen weeks or longer, as long as the objectives of protection, i.e. protection of mother and child as well as equality of treatment, are not lost from sight.

Botswana. This should be subject to consultation among the social partners.

Brazil. CNC and CNI: No. Any extension must be the result of collective agreement.

CNF: Fourteen weeks are insufficient for a nursing mother to recuperate and return to work.

Cambodia. See Question 5(2).

Canada. Fourteen weeks would be a good minimum as opposed to 12 weeks.

CEC: No. Before considering prolonging the minimum duration of maternity leave, it is important to induce countries that do not respect the minimum duration of 12 weeks to do so as quickly as possible.

CLC: Yes. Fourteen weeks minimum, 18 weeks recommended.

Chile. If a member State is able to, it should extend the leave to 14 weeks for the benefit of the child's healthy development and to foster breastfeeding and bond formation. The mother's health should not be invoked as the cause of the extension. This could be provided for in some countries in the form of sickness leave.

CPC: No. The Convention is sufficient. Instead of providing protection, the extension of leave is detrimental to the employment of women.

China. The 14-week leave period was formulated during the 1950s. It should be examined in light of scientific development. An appropriate leave period can be determined on that basis.

Colombia. Such extension would depend on the circumstances of each country.

CGTD: Fourteen weeks would be ideal. Some believe that additional benefits would place women workers in an unequal situation in the application for jobs. Extension could be taken into account in the case of illness.

Comoros. In future, 14 weeks should be the minimum.

Congo. It is desirable that this duration be extended to 15 weeks to permit the employed woman to take care of her child until the age of 3 months.

Croatia. This question should be regulated by the Convention.

Cyprus. If the minimum leave entitlement is fixed at 14 weeks in the Convention, then the Recommendation could provide for a minimum of 16 weeks.

Czech Republic. ČMK OS: This should be stipulated in the Convention.

Denmark. Leave of 14 weeks is reasonable.

Dominica. CSA: Yes, with a period of compulsory leave after confinement of 12 weeks.

DAWU: Yes.

DTU: No. Question 7 above has taken care of that necessity.

WAWU: Yes.

Ecuador. CEDOC: We are in agreement with anything that will introduce improvements, but where this is not the case we should maintain the current provisions.

UGTE: Yes. Not only should they endeavour to extend the period of leave, but it should also be compulsory for at least 14 weeks.

Egypt. Egyptian Trade Union Federation: Yes.

El Salvador. The period of 12 weeks is sufficient; any increase to 14 weeks should be left to the discretion of the physician.

Ethiopia. The issue is directly related to the economic and social development of a nation. Efforts to extend the period must be made by each member State.

Finland. SAK, STTK and AKAVA: Preferably to 16 weeks.

France. In conformity with EU Directive 92/85/EEC of 19 October 1992.

CNPF: No.

CFDT: Studies in France claim that 16 weeks' leave would lessen the incidence of premature births and would lower infant mortality.

Germany. Article 8(1) of EU Directive 92/85/EEC prescribes maternity leave of at least 14 weeks.

BDA: No.

Ghana. It should be extended when the need arises, especially in situations when the mother or the child's health condition deteriorates.

NCWD: Yes. Or longer upon the medical recommendation of a government recognized hospital.

GEA: Yes. Where there are postnatal complications.

TUC: Yes. Because of the emphasis on six months' breastfeeding.

Honduras. Only in justified cases of illness, complications at delivery or multiple births.

COHEP: This is a matter for national legislation.

India. In more than 60 member States (41 per cent of total Members), the period of maternity leave is already 14 weeks.

AITUC: No. A minimum of six months' leave should be allowed.

Bharatiya Mazdoor Sangh: Yes. Members should endeavour to extend the period of maternity leave to 14 weeks or more.

Centre of Indian Trade Unions: Yes. Maternity leave can be extended to 135 days.

Indonesia. Where necessary to the health of the woman concerned.

APINDO: No.

Iraq. General Federation of Trade Unions: Yes.

Jamaica. JEF: Yes.

Japan. JTUC-RENGO: The period should be extended to 16 weeks.

Jordan. Provided that the extension of the leave be agreed upon between the employed woman and the employer.

Amman Chamber of Industry: Yes. Provided that the leave is an unpaid one.

Federation of Jordanian Chambers of Commerce: No.

Kenya. Members should endeavour to extend the period to 12 weeks.

Republic of Korea. In reality, many countries cannot meet even the 12-week leave prescribed in the Convention. A discussion point must be given to the ways to enable more nations to fulfil the basic requirements first. A practical approach should be taken to harmonize the duration of leave with the financial conditions of member States. For example, in case of possible extension of the leave, a wage decrease after a certain period of time might be discussed.

FKTU: Yes.

Lebanon. It should be left to member States to determine such extension in accordance with their circumstances, considering the additional financial implications of such extension. States should be under no obligation to extend the period of maternity leave.

Malaysia. MAPA: It could discourage the employment of women.

MTUC: Yes. It would allow mothers to nurse the child.

Mauritius. Any such extension would depend on it being sustainable by the member State.

MEF: No.

Mexico. Such extension would mean the payment of cash benefits equivalent to two additional weeks, to be borne by the social security system. The benefit would cost more and the extended absence of the worker would imply lower levels of productivity in enterprises. Both aspects have an impact on labour costs and could be a reason for limiting the employment of women. Some countries may consider 12 weeks' maternity leave to be excessive.

Morocco. FCCIS: No. To be negotiated.

Mozambique. If conditions permit.

OTM: This extension should be made after consultation with the social partners. In the least developed countries, the extension should be selective and applicable only to complicated cases of confinement.

Myanmar. To maintain better health for mother and child.

Namibia. Twelve weeks are sufficient.
NEF: Yes.
NUNW: Yes. If possible, due to complications.

New Zealand. National law provides the entitlement to maternity leave of one continuous period not exceeding 14 weeks, and other parental leave entitlements of up to 52 weeks.

Oman. No, it is a relatively long period.

Pakistan. Maternity leave may be extended to 14 weeks if insufficient medical facilities are available in the country. The Recommendation should make a relevant provision in this regard.

Peru. CUT: Yes.

Philippines. Extending the period of maternity leave to 14 weeks may be acceptable in progressive countries. In developing countries, employers may object, considering that maternity benefits mean added costs. Such a move might further disadvantage women through a consequent reluctance of employers to hire women.

Portugal. CIP: No. See Question 5(2).
CAP: Repeatedly increasing the length of maternity leave could have an adverse effect on women's access to work and their career development, due to non-employment by companies of women in certain posts.

Russian Federation. Include "if the economic possibilities exist".

South Africa. BSA: No. Twelve weeks are adequate.

Spain. It would be appropriate to adopt in a Recommendation a provision similar to the one in Article 1 of Recommendation No. 95.

Sri Lanka. Extending the maternity leave to 14 weeks is not suitable for developing countries.

Suriname. FAL: No. Extension must be based on medical grounds.

Switzerland. VSA: Yes. The Recommendation should refer to an extension of 14 to 16 weeks.

Thailand. Without pay.

Togo. To encourage Members to go beyond the minimum.

Trinidad and Tobago. Employers' Consultative Association of Trinidad and Tobago (ECA): No.

Tunisia. To the extent that the economy and social security system of the State permits. Strong protective measures could have negative consequences on women's employment.

Turkey. The wording of Question 5(2) is more appropriate.
TÜRK-İŞ: Yes. Sixteen weeks would be healthier.

United Kingdom. The Pregnant Workers Directive sets this as a reasonable period to ensure the health and safety of the mother and child.

United States. There is no valid medical or other basis for establishing a predetermined period of maternity leave.
AFL-CIO: Yes.

Uruguay. National Chamber of Commerce and Chamber of Manufacturers: No.

Viet Nam. It depends on the situation of the country. However, 14 weeks is a reasonable duration.

Zimbabwe. This provision should be included in the Convention.

There was broad support for inclusion of this provision in the Recommendation, a provision which corresponds to the maternity leave provision in Questions 5(1)-(2) above. Several replies noted that 14 weeks or more should be the minimum leave period. Report V(1) on *Maternity protection at work* illustrated that the vast majority of countries already provide for maternity leave of a duration of 12 weeks or more. However, the provision of leave beyond the 12-week period provided for in *Point 7(1)* to 14 weeks was seen as dependent upon many factors including the economic capacity of the Member state and the collective bargaining process. A minority of replies opposed to this provision cited a number of other hurdles, such as potential adverse consequences that a lengthy leave might have upon a woman's employment. Others suggested that the decision to provide for a maternity leave period of more than 12 weeks should be left to the discretion of the physician, for instance, where illness or other health-related complications arise. Furthermore, concerns were raised that any extension of maternity leave should not be associated with other types of leave, most notably those relating to adoption, parental or sick leave.

This provision has been included as *Point 15(1)* of the Proposed Conclusions, which includes the additional phrase "at least" thus leaving it open to Members to provide for a longer period if their national situation so permits. By way of comparison, 1(1) of Recommendation No. 95 referred to extending this period "to a total period of 14 weeks", but did not envisage providing a maternity leave beyond 14 weeks.

Qu. 15(1) *Should the prenatal portion of leave be extended by any period elapsing between the presumed date of confinement and the actual date of confinement, without any reduction in the duration of the woman's postnatal leave?*

Total number of replies: 102.

Affirmative: 75. Angola, Argentina, Austria, Barbados, Belgium, Benin, Botswana, Bulgaria, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Croatia, Cuba, Cyprus, Denmark, Ecuador, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Greece, Honduras, India, Indonesia, Islamic Republic of Iran, Jamaica, Japan, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lithuania, Luxembourg, Mali, Mauritius, Mexico, Republic of Moldova, Mozambique, Netherlands, Nicaragua, Niger, Pakistan, Philippines, Poland, Portugal, Qatar, Romania, San Marino, Saudi Arabia, Seychelles, Slovakia, Sri Lanka, Suriname, Switzerland, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Ukraine, United Arab Emirates, Uruguay, Viet Nam, Zimbabwe.

Negative: 16. Australia, Bahrain, Belarus, Brazil, Czech Republic, Egypt, Guyana, Malaysia, Namibia, Papua New Guinea, Peru, Slovenia, South Africa, Tajikistan, Tunisia, Turkey.

Other: 11. Hungary, Lebanon, Morocco, Myanmar, New Zealand, Norway, Oman, Russian Federation, Spain, United Kingdom, United States.

Australia. If a woman chooses to take leave well before her actual confinement date, without medical necessity, it is her choice and the leave period should not be extended. If there is medical necessity to the prenatal leave, she should be entitled to use her sick leave. See Question 7.

ACTU: Yes.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes, when this is necessary to protect the health of the mother and ensure healthy development of the foetus.

Bahrain. The period of leave set for confinement includes the prenatal and postnatal periods, so the overall leave does not require extension by the actual prenatal period, which however long, should be considered as sick leave.

Barbados. The woman should benefit from the full 12- or 14-week period of maternity leave if she so desires.

Belarus. It would be more appropriate to leave this to the national legislation of individual member States.

Belgium. Without reduction in the compulsory postnatal leave.

Brazil. CNC and CNI: Yes.

Cambodia. In general it is not possible to predict the exact date of birth.

Canada. This could prove to be a sticking point. Few jurisdictions provide for the extension of the prenatal portion of the leave.

Chile. This extension is absolutely necessary, given that prenatal and postnatal leave are not prescribed for the same medical purpose.

China. Recuperation following confinement cannot be shortened. The Recommendation should provide that the days of extension be recognized as prenatal leave.

Comoros. Postnatal leave should be compulsory and should not be shortened.

Congo. When confinement occurs later than foreseen by the gynaecologist or the midwife.

Cyprus. This is a very important stipulation. It should be transferred to the Convention.

Czech Republic. UZS ČR: No. A maximum of six weeks' leave, unless the woman's state of health calls for its extension.

ČMK OS: Yes. The expected date of birth can be ascertained relatively precisely using modern medical methods, so the length of time between the expected birth date and the actual date of birth is not usually very great. Extending maternity leave by this period is a negligible demand.

Denmark. Best handled at the national level.

Dominica. CSA: Yes.

DAWU: Yes.

DTU: No. Prenatal leave should be granted during a period calculated to elapse between the presumed and actual dates of confinement, whichever is longer.

WAWU: Yes.

Ecuador. UGTE: Yes. If a fixed prenatal period of leave is not established, the period should be extended.

Egypt. Egyptian Trade Union Federation. Yes.

El Salvador. Yes. In most cases, this is due to circumstances which cannot be anticipated in medical terms.

Ethiopia. CETU: Yes. Unless this has been taken with negligence.

Finland. The difference is likely to be small.

TT, LTK, Federation of Finnish Enterprises and KT: No.

France. CFDT: Yes.

Ghana. Upon the recommendation of the medical officer.

GEA: Yes. Prenatal and postnatal complications should determine the extension of the periods.

Honduras. COHEP: No. Provided that the prenatal leave period is clearly established.

Hungary. No objection in principle. The Convention must include a definition of the terms and justified cases for such measures.

India. AITUC: Yes, since the period elapsing between the presumed and the actual date of confinement is not subject to the worker's control.

Bharatiya Mazdoor Sangh: There will be very few cases where there is a vast difference between the presumed and the actual date of confinement.

National Front of Indian Trade Unions: No.

Indonesia. As mentioned in Recommendation No. 95.

APINDO: No. It is understood that there is a risk of moving the date of confinement.

Iraq. General Federation of Trade Unions: Yes.

Jamaica. JEF: Yes, as long as additional provisions are included to prevent abuse.

Jordan. Amman Chamber of Industry: Yes. The maternity leave should not exceed ten weeks in all before and after confinement.

Federation of Jordanian Chambers of Commerce: No.

Kenya. It may be left to the discretion of the employer to recover any prenatal portion of leave so extended.

Republic of Korea. The extension of leave should be flexibly applied to member States, provided that the maternity leave is basically ensured.

Korea Employers' Federation (KEF): No.

Lebanon. Such extension may lead to exceeding the maximum leave provided for in each State or in the Convention itself, particularly when there is a specified compulsory postnatal leave. The question arises as to whether this would involve any increase in financial and non-financial commitments, with regard to the prenatal portion of the leave.

Lithuania. Confederation of Lithuanian Entrepreneurs/Employers: As desired by the woman.

Malaysia. MAPA: Yes.

MEF: No. The prenatal leave is part of maternity leave and should be accounted for accordingly.

Mauritius. The period of compulsory leave after confinement should not be reduced to compensate for such additional leave.

Morocco. Upon agreement between the employer and the woman worker.
FCCIS: To be negotiated.
CDT: Yes.

Mozambique. See Question 7.
OTM: This should be the subject of consensus and adopted in collective labour agreements.

Myanmar. Existing service rules and regulations of Myanmar provide a 12-week period of maternity leave from the date of its commencement, or six weeks from the date of confinement, whichever is earlier.

Namibia. No automatic extension.
NEF: No. Consistency in granting maternity leave is important, be it prenatal or postnatal, to create uniformity.
NUNW: Yes.

Netherlands. FNV: This provision should be included in the Convention, not the Recommendation.

New Zealand. In New Zealand, maternity leave may begin on any of the following: the date of confinement; the date of assuming the care of a child being adopted; an earlier date which is within six weeks of the expected date of delivery; an agreed date; a date determined by a medical practitioner as being when the female needs to begin leave for medical reasons; or a date appointed by the employer due to the employee's inability to perform work safely and to an adequate standard.
NZEF: Some flexibility would seem to be desirable.

Norway. Generous national leave provisions ensure that the eventuality foreseen in this question is covered.

Oman. Medical reports that document the case are the determining factor in determining the period of leave before and after confinement.

Pakistan. On production of a medical certificate.
PNFTU: Yes.

Papua New Guinea. There should be a fixed prenatal and postnatal period.

Peru. CUT: Yes.

Philippines. There should be some leeway in the use of pre- and postnatal leave, but only within the time duration of the entire maternity leave.

Portugal. CIP: No. See Question 5(2).
CAP: No.

Romania. National Council of Private Small and Medium-sized Enterprises: No. The period during which leave is taken depends on medical advice regarding the pregnancy. Additional leave should be accorded in the case of illness, complications or risk of complications as indicated in Question 7.

Russian Federation. Under the Labour Code, maternity leave is reckoned as a total period and is granted to women irrespective of how many days have actually been taken before confinement.

Saudi Arabia. Any reduction in the duration of the postnatal leave could endanger the woman's health.

Slovakia. The length of period of leave after childbirth is the same for all women.

South Africa. Not unless for medical reasons.
BSA: No. Any further extension of leave will simply increase all the problems alluded to in the general observations.

Spain. This provision should be included in the Convention, which is where it is currently found.
CIG: Yes.
CCOO: Yes.

Sri Lanka. Only on the grounds of health care of a mother and a child.

Suriname. FAL: If based on medical grounds.

Tunisia. This extension should not increase the total duration of maternity leave.

Turkey. Such a provision will contradict the stipulations of Question 5(1).
TISK: Yes. If any divergence in the dates of presumed and actual confinement were to play a restrictive role in the prenatal and postnatal periods of leave provided, this would run counter to the minimum nature of the periods provided for maternity leave. Prenatal and postnatal periods require two different types of treatment and care. An additional period granted before confinement would not present any advantage for postnatal treatment and care.
TÜRK-İŞ: Yes.

United Kingdom. Where the period of maternity leave is insufficient to guarantee a woman time to recover from a birth which is later than expected, the leave and period of employment protection should be extended long enough to enable the mother to recover from the normal effects of giving birth.

United States. The Recommendation should be flexible to accommodate each worker's need in the context of national laws and regulations.
USCIB: No.
AFL-CIO: Yes. The recommended period of postnatal leave is designed to protect and promote the physical and emotional health and well-being of both mother and child. This period should not be diminished due to longer than expected prenatal leave.

Viet Nam. It is necessary to protect women's health.

This question essentially addresses a situation in which a woman's presumed delivery date has passed, thus making the prenatal portion of her leave overlap with the postnatal portion foreseen. Several replies acknowledged that the presumed date was not always accurate, resulting in the need for an extension of prenatal leave in those cases where confinement was late and consequently in a reduction in postnatal leave. Yet, several queries were raised, including whether the extension of prenatal leave should be viewed as sick leave rather than maternity leave, or whether such extensions would be necessary in practice given more modern techniques of predicting birth dates. Many replies conceded, however, that complications might arise, which in turn could give rise to the need for an extension of the prenatal leave period. The Office noted that the legislation of some countries already provides for such instances. Some replies considered that the regulation of this matter should therefore be left to national legislation. Others preferred that this matter be decided through the collective bargaining process.

This provision, which recalls Article 3(4) of Convention No. 103, has been included as *Point 15(2)* of the Proposed Conclusions, reflecting the majority view on the question. The wording has been altered slightly to clarify the intention which was to avoid any reduction in "any compulsory portion" of postnatal leave, rather than "in the duration of the woman's" postnatal leave. Although the suggestion was made that this provision be transferred to the Convention, the Office did not consider that there was sufficient support for such a transfer.

Should provision be made for an extension of the maternity leave referred to in Question 5 above in the case of: **Qu. 15(2)**

(a) multiple births;
(b) single mothers;
(c) other cases?

Global answer to Paragraph 2, subparagraphs (a)-(c):

Total number of replies: 5.

Affirmative. 1. Poland.

Negative: 2. Australia, Mexico.

Other: 2. Denmark, United States.

Subparagraph (a):

Total number of replies: 95.

Affirmative: 68. Angola, Austria, Barbados, Belarus, Benin, Bulgaria, Cameroon, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Croatia, Cuba, Cyprus, Czech Republic, Ecuador, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Greece, Honduras, Islamic Republic of Iran, Italy, Jamaica, Japan, Republic of Korea, Kuwait, Latvia, Lithuania, Luxembourg, Mali, Mauritius, Republic of Moldova, Mozambique, Namibia, Nicaragua, Niger, Pakistan, Papua New Guinea, Philippines, Portugal, Romania, Russian Federation, San Marino, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Ukraine, United Arab Emirates, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Negative: 20. Algeria, Bahrain, Belgium, Botswana, Brazil, Canada, Egypt, Guyana, Jordan, Kenya, Malaysia, Netherlands, Oman, Peru, Qatar, Switzerland, Syrian Arab Republic, Togo, Turkey, United Kingdom.

Other: 7. Costa Rica, Hungary, India, Lebanon, New Zealand, Norway, Saudi Arabia.

Subparagraph (b):

Total number of replies: 92.

Affirmative: 42. Angola, Belarus, Bulgaria, China, Colombia, Comoros, Congo, Croatia, Cuba, Cyprus, Czech Republic, Ecuador, Ghana, Greece, India, Islamic Republic of Iran, Italy, Jamaica, Luxembourg, Mali, Mauritius, Republic of Moldova, Nicaragua, Niger, Papua New Guinea, Philippines, Romania, San Marino, Saudi Arabia, Seychelles, Slovakia, South Africa, Sri Lanka, Suriname, Syrian Arab Republic, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, United Arab Emirates, Venezuela, Viet Nam.

Negative: 44. Algeria, Austria, Bahrain, Barbados, Belgium, Benin, Botswana, Brazil, Cameroon, Canada, Central African Republic, Chad, Chile, Egypt, Estonia, Ethiopia, France, Guyana, Honduras, Japan, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lithuania, Malaysia, Mozambique, Namibia, Netherlands, Oman, Pakistan, Peru, Portugal, Qatar, Slovenia, Spain, Switzerland, Togo, Turkey, Ukraine, United Kingdom, United States, Zimbabwe.

Other: 6. Costa Rica, Finland, Hungary, Lebanon, New Zealand, Norway.

Subparagraph (c):

Total number of replies: 71.

Affirmative: 41. Austria, Barbados, Belarus, Cameroon, Colombia, Comoros, Congo, Croatia, Czech Republic, Ecuador, El Salvador, Estonia, Finland, Germany, Ghana, India, Italy, Jamaica, Kuwait, Lithuania, Luxembourg, Mali, Mauritius, Morocco, Mozambique, Nicaragua, Niger, Pakistan, Papua New Guinea, Portugal, Romania, Slovakia, Slovenia, South Africa, Sri Lanka, Suriname, Trinidad and Tobago, Ukraine, Venezuela, Viet Nam, Zimbabwe.

Negative: 23. Bahrain, Belgium, Botswana, Brazil, Bulgaria, Chile, Ethiopia, France, Honduras, Jordan, Kenya, Malaysia, Namibia, Netherlands, Peru, Philippines, Qatar, Spain, Switzerland, Syrian Arab Republic, Thailand, Turkey, United Kingdom.

Other: 7. Costa Rica, Cuba, Cyprus, Lebanon, New Zealand, Norway, Togo.

Argentina. CGT: Yes to (a)-(c). (a) Leave should be increased in proportion to the actual number of births. (b) Give family leave rather than maternity leave. (c) A child born with congenital conditions.

Australia. Rather than identify specific categories of mothers, provide the option of extending leave to all women as required. Extension would then be negotiable on a case-by-case basis. The Recommendation could set down examples of reasons for negotiating an extension, which might include these grounds and those mentioned in Question 16(2). (c) Children with disabilities or serious illness.

ACTU: Yes to (a)-(c). (c) A child born with a disability or serious illness.

Austria. (c) Premature delivery or Caesarean section.

BAK: Yes to (a) and (c); no to (b). (b) A special provision for single mothers could lead to discrimination.

ÖGB: Yes to (a)-(c).

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes to (a)-(c).

Bahrain. (b) There is no difference between single or married women's confinement.

Barbados. (a) Multiple births are more taxing physically. (b) No special provision needed because of marital status. (c) A child born with special needs. Should be included in the Convention.

Barbados Workers' Union (BWU): No to (c).

Belarus. (c) Illness or complications arising out of birth.

Belgium. (b) If such an extension serves the goals of maternity protection, why not also provide leave for the father, for example, in the case of the mother's death? (c) Might be better placed in the framework of balancing work and family responsibilities. The text mentions "an extension of maternity leave"; consequently the period of extension should be treated in the same manner as maternity leave.

CNT: (a) The inclusion of such a provision in the instrument is worth questioning. The circumstances foreseen here are among a number of situations which might require particular attention. The solution to such problems might reside in a number of measures, only one of which might be an extension of leave. Other measures, such as parental leave which would allow fathers to be involved, might offer flexible solutions.

Benin. The length of extension should be set by national legislation.

COSI: Yes to (a) and (b).

Botswana. (a)-(b) Defeats the purpose for which maternity leave is granted.

Brazil. CNC and CNI: No to (a)-(c).

CNF: Yes to (a)-(c). (a) With the birth of three or more children. (b) Extra remuneration should also be provided. (c) Children with illnesses which require greater mobility on the part of mothers in the form of visits to hospitals, psychiatric centres, etc.

Cameroon. (a) If necessary. (c) Illness of mother or child.

Canada. (a) National legislation does not provide for an extension of maternity leave for multiple births. In many jurisdictions, however, it is possible to obtain an extension of maternity leave for medical reasons.

CEC: No to (a)-(c).

CLC: Yes to (a)-(c). (c) Birth requiring medical/surgical care for child or mother.

Central African Republic. (b) Except in the case of her husband's death, internment or hospitalization, or if the marriage was dissolved before the birth.

Chile. (a) If medical reasons so justify, an extension both of the prenatal and postnatal maternity leave should be considered for multiple pregnancy. (b) As proposed, it alone does not justify an extension.

CPC: No to (a)-(c).

Colombia. (a) If the individual circumstances of each member State permit.

Comoros. (b) Upon the request of the woman and with the employer's agreement. (c) In the event of the husband's death.

Congo. (c) Premature birth, medically certified threat to the health of the mother.

Costa Rica. (a)-(c) These cases go beyond the minimum guarantees envisaged by the Convention and should be left to national legislation in individual member States.

Croatia. (c) Illness of the child.

Croatian Association of Employers: The extension of maternity leave should be provided, but without stating special cases. (b) No. If specific categories of women are mentioned, single mothers should be excluded.

KNSH, SSSH, HUS, MATICA and KHSJSN: Yes to (a)-(c).

Cuba. (b) Social welfare programmes for single mothers should be developed, including all necessary benefits in money, in services and in kind, provided on a flexible basis adapted to particular circumstances. (c) To enable personal care of her child up to a certain age, either with or without financial benefits.

Cyprus. (c) Where working conditions are prejudicial to the health of the mother or when the child is seriously ill.

PEO: Yes to (a)-(c). (c) A newborn child with special health problems or disabilities.

Czech Republic. (c) The birth of a child requiring special care.

UZS ČR: (a)-(c) In general, no. To be left to national legislation.

Denmark. Equal Status Council. It depends on the individual situation.

DA: No.

LO: Special rules should apply in case of abnormal birth or the need for special care for parents or child.

Dominica. CSA: Yes to (a)-(c). (c) Physically handicapped, premature births.

DAWU: Yes to (a) and (c). (c) Complications with pregnancy and after delivery (such as hypertension and diabetes).

DTU: Yes to (a) and (c); no to (b). (c) Extension should be granted only in the best interest of the health and safety of mother and child. Single mothers are no exception.

WAWU: Yes to (a)-(c). (b) For very young mothers particularly. (c) Complications.

Ecuador. (b) If no appropriate care facility has been found or if no one else is available to give assistance. (c) Risk to the lives or physical and mental health of the mother or child.

CONAMU. Yes to (a)-(c). (a)-(b) Extension should be compulsory. (c) Health problems and/or special needs of mother or child.

UGTE: Yes to (a)-(c). (c) Children born with disabilities or unusual illnesses.

Egypt. Egyptian Trade Union Federation: No. Such extension would be a reason for employers not to recruit women.

El Salvador. (c) Prolonged labour, forceps births or any other maternity pathology.

Estonia. (a) On the basis of mother's and child's health. (b) The term "woman" includes both married and single women. (c) Complications or illness.

Estonian Association of Trade Unions: Yes to (a)-(c). (c) Complications.

Ethiopia. CETU: Yes to (a) and (c); no to (b). (c) Abortions.

Finland. (b) The position on this question depends on the whole context in which parental leaves are generally arranged. (c) Child-care leave for adopted children.

TT, LTK, Federation of Finnish Employers and KT: No to (a)-(c).

SAK, STTK and AKAVA: Yes to (c). See Question 16(2).

France. CNPF: Yes to (a); no to (b)-(c).

CFDT: Yes to (a)-(c). (c) Illness related to pregnancy and childbirth.

CFE-CGC: Yes to (a)-(c). (c) Child born with a handicap or illness, or high-risk delivery.

CFTC: Yes to (a) and (c); no to (b). (b) Would it not discriminate in favour of women who are cohabiting? (c) The child's serious illness or handicap. If there are other children in the family.

CGT-FO: Yes to (a)-(c). (c) Illness of the child.

Germany. Such a need may arise, although the prohibition of employment during an extended period of maternity leave can cause problems for a mother with inadequate financial resources during the maternity leave. Cumulative extension by 15(2)(a), 15(2)(b) and 15(2)(c) is not in the mother's interests. (c) Premature births. All or part of the usual period of prenatal leave is lost owing to the premature birth. Compensation should be provided in the form of a commensurate extension of postnatal leave. The total period of prenatal plus postnatal leave should not be longer than in the case of multiple births.

BDA: Yes to (a); no to (b)-(c).

DGB: Yes to (a)-(c). (c) Illness of mother or child.

DAG: Yes to (a)-(c). (c) Premature births and illness of mother or child.

Ghana. (a) To ensure the survival of the children. (c) A child born with a disability.

NCWD: Yes to (a)-(c). (c) Pregnancy-related illnesses, premature births. It is important to differentiate between pregnancy-related and other illnesses.

GEA: Yes to (a)-(c). (b) But on a case-by-case basis. (c) Sickness.

TUC: Yes to (a) and (c); no to (b). (c) Complications during childbirth, sickness of child or hospitalization.

Honduras. COHEP: Yes to (a), provided that the leave does not exceed 14 weeks. No to (b).

Hungary. (a)-(b) Should depend on the mother's choice.

India. (a) Such extension may be considered. (c) On medical advice.

AITUC: Yes to (a)-(c).

Bharatiya Mazdoor Sangh: Yes to (a)-(b); no to (c). (a) Compulsory leave should be extended by six weeks. (b) Compulsory leave should be extended by two weeks.

Centre of Indian Trade Unions: Yes to (a)-(b).

HMS: Yes to (a)-(c). (c) Where maternity is restricted to two children, in case of death of a child or children, maternity leave should be allowed till two surviving children.

INTUC: Yes to (a)-(c). (c) Complications before or after delivery.

National Front of Indian Trade Unions: No to (a)-(b). (c) Should be limited to two pregnancies in order to fight the population explosion in under-developed countries. Benefits should be related to productivity.

Indonesia. APINDO: No to (a)-(c).

Iraq. General Federation of Trade Unions: Yes to (a) and (c); no to (b). (c) Unusual births.

Italy. Extension of maternity leave should be provided in specific cases (premature birth or birth of a child with particular health problems, multiple births, single-parent families), with the possibility of optional leave in the event of the child's hospitalization.

CONFINDUSTRIA: (a)-(c) Should be handled through collective bargaining or national legislation.

Jamaica. (c) Stillbirths and Caesarean births.

JEF: Yes to (a) and (c); no to (b).

Japan. (b) Extension because a woman is single is out of keeping with the medical reasons for maternity leave.

NIKKEIREN: (a) No objection to extension of prenatal leave. (b) Extension of leave due to family conditions must be considered separately from maternity protection.

JTUC-RENGO: Yes to (a)-(c). (c) If needed for full recovery after childbirth.

Jordan. Amman Chamber of Industry: Yes to (a); no to (b)-(c).

Federation of Jordanian Chambers of Commerce: No to (a)-(c).

General Federation of Jordanian Trade Unions: Yes to (a); no to (b)-(c).

Republic of Korea. (b) Extension of maternity leave for single mothers would make it harder for them to get a job, instead of protecting them.

Kuwait. (a) In the case of more than two births. (c) The birth of an unhealthy or disabled child with congenital malformations.

Lebanon. (a) No provision need be made. Recourse to such measures may be made for State-specific demographic considerations. (c) Illness arising directly from confinement if a woman has exhausted her ordinary sick leave. Such a matter should be left to national legislation. Questions remain concerning the implications of such measures on cash benefits and medical entitlements.

Lithuania. (c) Complications at birth.

Confederation of Lithuanian Entrepreneurs/Employers: Yes to (a)-(b).

Centre of Lithuanian Trade Unions: Yes to (a)-(b).

Lithuanian Labour Federation: Yes to (a)-(b).

Lithuanian Workers' Union: Yes to (a)-(c). (c) Extreme emotional trauma during confinement and pregnancy.

Unification of Lithuanian Trade Unions: Yes to (a)-(c). (c) The mother's disability or chronic illness.

Luxembourg. (c) Premature birth.

Malaysia. MAPA: No to (a)-(c). Maternity leave is granted based on confinement.

MEF: No to (a)-(c). (a) The confinement occurred at the same time. It is immaterial whether it is a single or multiple birth. (b) Single mothers should not be given any extra privilege based purely on their single status.

Mali. (c) The child's illness. Special events, such as circumcision.

Mauritius. (a) The period of extension should be left to the discretion of the member State. (c) Illness arising from childbirth.

MEF: No to (a)-(c).

Mexico. These situations should be regulated through collective bargaining.

Morocco. (c) Medically certified complications.

FCCIS: (a)-(b) To be negotiated.

CDT: Yes to (c). (c) Illness linked to pregnancy.

Mozambique. (b) Other alternatives exist for guaranteeing the care of the child when the mother is working. (c) Illness of mother or child after maternity leave.

OTM: Yes to (a)-(c). (c) Young persons without experience of caring for infants.

Namibia. NEF: Yes to (a); no to (b)-(c). (a) Cash benefits should be borne by other state means, e.g. social welfare if applicable. (b) Other social welfare mechanisms should cater for this specific need.

NUNW: Yes to (a)-(c). (c) Caesarian birth.

Netherlands. (a) Multiple birtns do not necessarily require a longer period of recovery for the mother. If longer leave is needed, it should be granted on account of illness. (b) The period required for the recovery of a single mother will be longer than for a married or cohabiting mother.

New Zealand. (a)-(b) In New Zealand, the provision of extended leave of up to 52 weeks is deemed sufficient for the situation of multiple births. Such leave is available to all employees, irrespective of their conjugal status. *(c)* There is no need to provide a list of special circumstances. General phrasing should cover all cases where a parent may need leave from employment to care for a new child, including the case of adoption.

Nicaragua. (b) Prefer the wording "heads of families" or "heads of households".

Niger. (c) Complications during delivery which require medical follow-up.

Norway. (a)-(b) Under national legislation, the allowance period, and hence the leave of absence, may be extended in the event of multiple births or for a person with sole responsibility for caring for a child. (c) Under national legislation, maternity leave may be extended to the extent that the person in question is entitled to maternity allowance from national insurance.

Oman. (b) There is no cause for discrimination in such cases.

Pakistan. (a) and (c) Maternity leave may be extended to recover health. (b) In accordance with the people's religious and social obligations.

PNFTU: Yes to (a)-(c).

Papua New Guinea. (a) Depending on circumstances. (c) Purely on medical grounds arising from complications during childbirth.

Peru. CUT: Yes to (a); no to (b)-(c). (b) Family responsibilities should be covered through parental leave. (c) Other cases could be covered through sick leave.

Philippines. (a) Any decision to extend maternity leave in case of multiple births should be in consultation with employers and workers. (c) Other cases may fall under other health-care regulations.

Poland. Current legislation provides for the extension of the maternity leave in the case of multiple births and subsequent confinements. Extension of maternity leave for single mothers would require amendment of the Labour Code.

KPP: Yes to (a)-(b).

OPZZ: Yes to (a)-(c).

Portugal. (c) Birth of children with major handicaps.

CIP: No to (a)-(c).

CAP: Yes to (a); no to (b).

CGTP: Yes to (a)-(b).

UGT: (c) The birth of children with disabilities.

Romania. (c) Handicapped women, women in rural areas where medical exams are more difficult, women working in economic sectors wherein the risk for mother and foetus is increased.

National Council of Private Small and Medium-sized Industries: No to (a)-(c). (a) Supplementary leave might be accorded for health reasons. (b) Supplementary leave for child care need not be linked to maternity leave. (c) Situations related to the health of mother and child would be considered under medical leave.

CSDR: No to (a)-(c).

Saudi Arabia. Depending on national legislation.

Slovakia. (c) The care of a disabled child.

Slovenia. (c) Premature birth; severe disability of child.

South Africa. (c) Pregnancy with complications; women required to perform heavy work.

BSA: No to (a)-(b). See the general observations.

Spain. (b) Does term "single" include cases in which a father does not help at all, or in which a grandmother does help, although there is no father figure?

CIG: Yes to (a)-(b). (a) The extension of the leave should vary according to the number of children born.

CCOO: Yes to (a)-(c).

Suriname. ASFA: Yes to (a) and (c); no to (b). (c) Abandoned mother or poor health of the child.

FAL: Yes to (a); no to (b)-(c).

Switzerland. VSA: Yes.

Syrian Arab Republic. (a) Normal sick leave is available. (b) This right arises from the Convention on the Rights of the Child, though the law recognizes legitimate relations (marriage).

Togo. (c) As ordered by a medical doctor.

Trinidad and Tobago. (b) On grounds to be clearly specified.

ECA: Yes to (a) and (c); no to (b).

NATUC: Yes to (a)-(b). (a) There must be the flexibility of additional leave, since the responsibility and workload heightens.

Tunisia. (a)-(b) The maximum extension should be specified in national legislation.

Turkey. (a)-(c) Leave without pay may be possible.

TISK: No to (a)-(c). (c) The Convention defines minimum periods of maternity leave. In case of need, additional periods can be granted. It would be undesirable both in theory and practice to include a separate provision in the Recommendation for every exceptional case.

TÜRK-IŞ: Yes to (a)-(b). (a)-(c) Must be dealt with through Convention No. 156.

Ukraine. (b) It is difficult to determine the objectivity of this social criterion. (c) Childbirth complications.

United Kingdom. Provision should be made for minimum standards in normal circumstances. Additional provision for other circumstances should be left to national law and practice.

United States. No distinction should be made on the basis of marital status. Leave could be extended in extraordinary cases based on the facts and circumstances.

USCIB: No to (a)-(c).

AFL-CIO: Yes to (c). (a)-(b) Differentiations should not be made based solely on numbers of children or on marital status. Provisions should be made for extension of maternity leave in cases of demonstrated hardship or need due, for example, to multiple births or single-parent status. (c) Special circumstances, such as illness of the father or other family members or special physical or emotional needs of the newborns.

Uruguay. National Chamber of Commerce and Chamber of Manufacturers: No to (a)-(c).

Venezuela. (c) Women suffering from illness or physical, psychological or professional handicap.
CTV: (a) There should be no such provisions for normal births.

Viet Nam. (c) The poor health of the mother or child.

Zimbabwe. (a) This section should also be included in the Convention. (c) Birth of a disabled child, pre-term birth, caesarian birth, or delivery complications which require special care for either mother or child.
ZCTU: Yes to (a) and (c); no to (b). (c) Surgical delivery.

This question proposed a new provision for an extension of maternity leave in the case of multiple births, single mothers, or other cases to be suggested in the replies. In the case of multiple births, a majority of governments, as well as employers' and workers' organizations, supported the provision of an extension of leave. The replies indicated that a number of countries already provide for limited extensions to the maternity leave period, referred to in *Point 7(1)* above, within national legislation. The rationale for such leave, as mentioned in many of the replies, relates to the possibility that the health of the mother and children may require more time for recuperation, and to the extra effort required to care for the children. A significant number of governments, as well as a few employers' organizations, opposed this provision, and considered that where additional recovery time was necessary, such leave should be treated as an extension of leave for medical reasons. In view of the majority support, this provision was included as *Point 15(3)* of the Proposed Conclusions.

Insufficient support was received with regard to an extension of maternity leave in the case of single mothers, and thus this provision was not included. Paragraph (c) of this Question solicited suggestions regarding other cases in which maternity leave might be extended. The comments identified a variety of "other cases," but the Office did not find strong support for any one of these. The Office notes that many comments related to the health of the mother and might thus be provided for in *Point 8(2)* of the Proposed Conclusions. Many other suggestions related to the health and care of the child. One union asserted that these matters should be addressed within the framework of the Workers with Family Responsibilities Convention, 1981(No. 156).

To the extent possible, should the woman be entitled to choose freely the time at which she takes any non-compulsory portion of her maternity leave before or after childbirth? **Qu. 16(1)**

Total number of replies: 101.

Affirmative: 70. Algeria, Angola, Argentina, Australia, Barbados, Belarus, Belgium, Botswana, Cameroon, Canada, Chile, China, Colombia, Comoros, Cuba, Cyprus, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Guyana, Honduras, Hungary, India, Indonesia, Islamic Republic of Iran, Italy, Jamaica, Kenya, Republic of Korea, Kuwait, Latvia, Mali, Mauritius, Republic of Moldova, Morocco, Mozambique, Namibia, Netherlands, New Zealand, Niger, Oman, Pakistan, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Romania, San Marino, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela, Viet Nam.

Negative: 21. Austria, Bahrain, Bulgaria, Central African Republic, Costa Rica, Croatia, Czech Republic, Finland, France, Germany, Ghana, Greece, Japan, Jordan, Lithuania, Malaysia, Switzerland, Syrian Arab Republic, Tajikistan, Togo, Zimbabwe.

Other: 10. Benin, Chad, Congo, Denmark, Lebanon, Luxembourg, Mexico, Nicaragua, Norway, Saudi Arabia.

Algeria. If taken immediately following childbirth.

Argentina. The woman should be able to choose in the light of medical advice.
CGT: The date on which the leave begins should be decided by the mother.

Australia. All leave should be non-compulsory and the start and finish times be determined by the mother as she deems appropriate. Medical certification endorsing her health could be requested if she chooses to return to work within six weeks of the birth.

Austria. Even the time of the non-compulsory maternity leave should be laid down.
ÖGB: Yes.

Azerbaijan. Azerbaijan Trade Unions Confederation: No. The purpose of maternity leave is to protect the health of the mother and her child.

Bahrain. The non-compulsory portion of maternity leave must be taken immediately after the compulsory portion of the leave.

Barbados. She should be free to choose to reduce the prenatal leave and extend the postnatal leave subject to her physical and mental condition.

Belgium. This choice is the woman's responsibility. "To the extent possible" could be deleted, since this is a Recommendation.
CNT: Maternity leave should not be split. It would be useful to include the principle of the unity of maternity leave in the instrument.

Benin. The idea of a non-compulsory portion of maternity leave should be made explicit.
COSI: Yes.

Botswana. To allow for flexibility.

Brazil. CNC and CNI: No.
CNF: No. The provisions of the Convention are sufficient as they stand. Any extension of the period should always be decided by a physician.

Central African Republic. This could negatively affect activities within the enterprise.

Chad. This provision does not exist in Chad.

Chile. Leave is prescribed by a medical practitioner and should not be altered at the patient's convenience. It is designed to protect health and to favour care during pregnancy and for the newborn. However, anything exceeding each country's compulsory minimum could be distributed on a voluntary basis.

China. Absolutely free choice is not necessarily consistent with the requirements of medical science. Under the guidance of her doctor, the woman may make her choice.

Colombia. Although initially at the discretion of the mother, the limits are defined by legislation in accordance with medical knowledge about pregnancy and how it is affected by work.

Congo. She must conform to health regulations in order to preserve her state of health.

Cuba. As long as it is not contrary to medical opinion and she does not perform work prejudicial to her health.

Czech Republic. UZS ČR: A maximum of six weeks before the birth of the child.
ČMK OS: Her personal right to decide should not be restricted.

Denmark. This matter should be left to the national regulations of each member State.
Equal Status Council: Yes. In cooperation with the individual woman's employer.

Dominica. CSA: No.
DAWU: Yes. In consultation with medical expert.
DTU: Yes.
WAWU: Yes.

Ecuador. If she is entitled to leave, she may choose by agreement between the parties.
UGTE: No. The whole period of leave should be compulsory

Egypt. On condition that a minimum amount of days is fixed for the authorized leave after confinement, in order to ensure the necessary health care for the mother.
Federation of Egyptian Industries: No.

Estonia. Choice should be possible due to health considerations and on the basis of medical recommendation.

Ethiopia. The woman should have the right to decide whether to postpone a portion of maternity leave for other unexpected problems requiring care for herself and her child.

Finland. Priority should be given to the needs of the mother, but in understanding with the employer. In countries with parental leave, there is usually no need for a non-compulsory portion of maternity leave. Provisions concerning the minimum length of a part of the leave are necessary. A reasonable period of notice should always be observed.

France. CFDT: Yes.
CFE-CGC: Some doubt as to whether a woman is always in a position to make such a choice freely.
CFTC: Yes. Allows freedom and the ability to adapt the law to the particular situation of the woman.
CGT-FO: Yes.

Germany. Maternity leave is absolutely essential for the health oı the mother and baby and should therefore not be a matter of choice. This does not apply to the parental leave that follows maternity leave.
DAG: Yes. Such a non-compulsory period of leave would correspond to the German parental leave.

Ghana. National laws should state clearly a specific time a pregnant woman is entitled to a leave.
NCWD: Yes.
TUC: Yes.

Honduras. COHEP: Yes.

India. A pregnant woman is the best judge as to when the non-compulsory portion of maternity leave is to be taken.

AITUC: Yes. Women should be allowed to choose when they would like to take maternity leave.

Bharatiya Mazdoor Sangh: Yes. The use of prenatal leave depends upon various factors, e.g. health constraints on the job, so the pregnant mother is the best judge as to when non-compulsory leave is taken.

National Front of Indian Trade Unions: No. This will affect employers' interests and productivity.

Indonesia. As long as it concerns the health of the mother and her child.

APINDO: No. This might disrupt work schedules.

Islamic Republic of Iran. Upon certification by the physician.

Iraq. General Federation of Trade Unions: Yes.

Italy. CONFINDUSTRIA: Should be handled through collective bargaining or national legislation.

Jamaica. JEF: No.

Japan. Maternity leave, including the non-compulsory portion, should be provided from a medical viewpoint for maternity protection. It would be inconsistent with this viewpoint if the time to take the non-compulsory portion could be chosen freely by the woman.

NIKKEIREN: Yes. Under national law, prenatal leave is non-compulsory. The law also provides for a non-compulsory portion of postnatal leave where work is permitted on condition that the duties are recognized by a doctor as not adversely affecting the woman. If such provisions are not considered to prejudice the woman's free choice, there is no problem.

JTUC-RENGO: From the medical viewpoint, prenatal leave should not be shortened for the purpose of prolonging postnatal leave. If the childbirth occurs early, the remainder of the six weeks leave may be taken after childbirth.

Jordan. Amman Chamber of Industry: Maternity leave should not be divided and should be taken at the time prescribed.

Federation of Jordanian Chambers of Commerce: Yes.

General Federation of Jordanian Trade Unions: Yes.

Republic of Korea. The woman should be entitled to choose freely, taking into account her own conditions, including physical and mental health.

Lebanon. A woman's right to choose should remain within limits and should not create organizational problems at work. Freedom of choice should be based on a medical report certifying that she can work before or after childbirth without prejudice to her health or that of her child.

Lithuania. For the sake of the mother's and child's health, maternity leave should be taken at the proper time without the right to choose.

Confederation of Lithuanian Entrepreneurs/Employers: Yes.

Centre of Lithuanian Trade Unions: Yes.

Lithuanian Workers' Union: Yes.

Unification of Lithuanian Trade Unions: Yes.

Luxembourg. Luxembourg legislation strictly prohibits pregnant women from working during the eight weeks preceding the expected date of childbirth.

Malaysia. MAPA: No. This would be too liberal and could cause havoc to labour requirements and working arrangements.

MEF: No. Her medical condition may make it compulsory for the female employee to take maternity leave before childbirth.

Mauritius. MEF: No.

Mexico. It is not clear what would constitute a non-compulsory period. The 12 weeks mentioned in Question 5(1) are presumed to be compulsory.

Morocco. In agreement with the employer.

FCCIS: No.

Mozambique. The mother should return to work when she is sure that the child will not be exposed to any risks, and in the case of sickness should present a medical certificate.

OTM: After the end of the compulsory maternity leave, a woman should enjoy all her rights in the enterprise.

Namibia. Provided it is recommended by a registered medical doctor/practitioner.

NEF: Yes. In agreement with the employer.

Netherlands. In view of the importance of the physical recovery of the mother, the aim should be for limited flexibility.

FNV: Guarantees for a truly free choice for the woman are necessary. Too often the employer tries to influence women in their choice.

New Zealand. See 15(1). A flexible approach where the employee and employer can determine the date of leave beginning allows the parties to individually ensure that their parental leave entitlement is taken in a manner that most adequately reflects their individual circumstances. Any approach that requires that an employee must take a mandated period of prenatal leave is inconsistent with the notion of maximum flexibility in the employment relationship.

NZEF: How leave is to be taken is a matter for the parents to decide for themselves. Parental leave in this country is given to protect employment, not to ensure that women have a compulsory break from work.

Nicaragua. In accordance with her medical doctor.

Norway. Norwegian legislation provides for this entitlement, provided that notification requirements are met.

Oman. The woman is best able to decide.

Pakistan. A woman is a better judge of her medical condition.

Papua New Guinea. In compliance with national laws and regulations.

Peru. CUT: With a medical certificate stating that postponement will not be prejudicial to the health of mother or child.

Portugal. CIP: Provided that the leave is granted for a consecutive period of time and that such an option takes account of the normal operation of the enterprise.

Qatar. Within determined limits particularly as concerns the extent of time period in which such leave could be taken.

Romania. The right of the women to pre- and postnatal maternity leave should be unconditional. The woman alone should decide on the number of days of leave that she intends to use before or after the delivery.

Saudi Arabia. Depending on national legislation.

South Africa. BSA: The word "entitled" is too strong. The timing of the leave should be decided in consultation with the employer.

Spain. This is in keeping with our regulations and those of the European Union.

Sri Lanka. Leave requirements depends on the health conditions of the woman and the child.

Suriname. FAL: No. It must be in consultation with the medical doctor.

Switzerland. VSA: Yes.

Syrian Arab Republic. Non-compulsory maternity leave can be paid or unpaid; it must immediately follow the period of compulsory leave to safeguard the health of both mother and infant.

Togo. Maternity leave is a right and a duty. It must be taken to ensure the health of mother and child.

Trinidad and Tobago. NATUC: Yes. This should be done in consultation with the woman's doctor.

Turkey. TISK: No. Distinctions between compulsory and non-compulsory maternity leave could prevent the full achievement of the objective of protection laid down in the Convention. Granting the woman the right to choose when to take any non-compulsory portion of her maternity leave would infringe upon the medical nature of confinement.

TÜRK-IŞ: It should be flexible.

United Kingdom. Yes, in principle. However, national law should be free to set the earliest and latest a woman can choose to start maternity leave.

United States. USCIB: Yes. The question highlights why States should not dictate the amount or timing of maternity leave.

AFL-CIO: Yes.

Venezuela. If the leave is supported by a medical or psychological certificate.

CTV: A period of pre- and postnatal leave should always be compulsory. The length of the leave should be specified by the woman's doctor. However, a woman should be entitled to use her holiday leave before the birth. This is a matter for negotiation with the employer or the relevant collective agreement. Alternatively, a provision to this effect could be included in the Recommendation.

Viet Nam. With the agreement of the employer.

Zimbabwe. It should be after childbirth.

ZCTU: Yes. The woman knows best when she wants to stop working and go on leave.

Although a majority of governments supported this provision in principle, over one-third submitted qualified replies. Many affirmed the desirability of increasing a woman's freedom of choice. However, several governments, as well as a number of employers' and workers' organizations, indicated conditions which should apply to such a provision. Several suggested limits to this right, whether set by national legislation, based on a medical certificate or reached through agreement between the woman and her employer. Some replies concluded that the fundamental purpose of maternity leave – the preservation of the woman's health and that of her child – would not be achieved if women could freely choose the time at which any non-compulsory leave could be taken. Several others affirmed, on the contrary, that the woman was in the best position to judge her health needs in consultation with her doctor.

A number of replies pointed out specific characteristics of their national legislation that were inconsistent with this provision. For example, national legislation of some countries provide that non-compulsory leave may only be taken immediately following the compulsory period, or that there may be maximum and minimum time periods before and after childbirth during which a woman might begin and end her maternity leave.

According to some replies, in countries where maternity leave was part of an overall period of parental leave, the non-compulsory part of the leave might be categorized as parental leave. One government noted that if non-compulsory maternity leave were synonymous with parental leave, then there would be no objection to this provision; however, if it were synonymous with maternity leave, then it could not support this provision because all maternity leave was compulsory under its national legislation.

Taking into account that a number of replies considered that this matter might be addressed through national legislation, collective agreements, or otherwise, the wording of this provision has been altered slightly to read "measures should be taken to ensure". This new provision has been included as *Point 15(4)* of the Proposed Conclusions.

Qu. 16(2)

In the event that her child is hospitalized after the expiry of any compulsory postnatal leave, as referred to in question 6 above, should a woman be entitled to postpone any remaining period of maternity leave until the child leaves hospital?

Total number of replies: 98.

Affirmative: 61. Angola, Australia, Belarus, Belgium, Brazil, Cameroon, Canada, China, Colombia, Comoros, Congo, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Ethiopia, Finland, France, Ghana, Honduras, Hungary, India, Indonesia, Islamic Republic of Iran, Italy, Jamaica, Jordan, Kenya, Kuwait, Latvia, Lebanon, Luxembourg, Mali, Mauritius, Republic of Moldova, Mozambique, Nicaragua, Niger, Oman, Pakistan, Papua New Guinea, Philippines, Poland, Portugal, San Marino, Slovakia, Slovenia, Sri Lanka, Suriname, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United States, Venezuela.

Negative: 29. Algeria, Austria, Bahrain, Barbados, Benin, Botswana, Chad, Chile, Germany, Greece, Guyana, Japan, Republic of Korea, Lithuania, Malaysia, Namibia, Netherlands, Peru, Qatar, Seychelles, South Africa, Spain, Switzerland, Syrian Arab Republic, Tajikistan, Togo, United Kingdom, Viet Nam, Zimbabwe.

Other: 8. Bulgaria, Costa Rica, Mexico, Morocco, New Zealand, Norway, Romania, Saudi Arabia.

Angola. Social legislation must be fairly flexible with a view to meeting the needs of the concerned parties.

Argentina. CGT: Yes. Legislation should provide for leave to care for family members.

Australia. Assuming that the intent is to protect the mother's health and that to recover from childbirth the mother needs a certain period of leave, then postponing it will put the woman at an unnecessary and unfair risk. If the purpose of the leave is child care, then the leave is more appropriately addressed under Convention No. 156.
ACTU: Yes.

Austria. BAK: Yes.
ÖGB: Yes.

Azerbaijan. Azerbaijan Trade Unions Confederation: The wording of the question is not clear.

Bahrain. Maternity leave is the mother's. She cannot request postponement of this leave, and neither her schedule nor her work may be altered by her child's admission or release from hospital.

Belgium. Hospitalization could occur for many reasons unrelated to birth. Unless the link with maternity leave is maintained, it would be leave of a different type.
CNT: Other solutions, such as parental leave, might also be envisaged.

Benin. The doctor should decide whether the health of the child requires the mother's presence.
COSI: Yes.

Botswana. The woman should exhaust the remaining period of maternity leave and then apply for annual or unpaid leave.

Brazil. In accordance with the legislation of the member State.
CNC and CNI: No.
CNF: Yes. If not, time off could be granted during the working day.

Bulgaria. Ministry of Labour and Social Policy: Yes. Ministry of Health, and Ministry of Justice and European Legal Integration: No.

Canada. Certain jurisdictions do not provide for such interruption of maternity leave and one province does not have parental leave. The latter may pose a problem with respect to this subsection.
CEC: No position on this point at this stage of the discussion.
CLC: Yes, although optimally, there should be additional leave when the child leaves the hospital.

Chile. Leave to care for a sick child serves a purpose different from that of postnatal leave, so it appears neither justified nor reasonable to merge them. Leave to care for a sick child should be granted to either parent.
CPC: Yes.

China. A woman should be entitled to take all maternity leave, but not to extend it. Additional leave may be treated as sick leave or another kind of leave.

Colombia. General labour standards make provision for this type of leave in the event of acts of God.

Comoros. Upon presentation of a certificate attesting to the child's hospitalization.

Congo. Taking into account the age of the child.

Costa Rica. These cases go beyond the minimum guarantees envisaged by the Convention. They should be left to member States to consider in the light of their own economies and social security systems.

Czech Republic. In accordance with national laws and practice.

Denmark. DA: It must be in accordance with national rules.

Dominica. CSA: No.
DAWU: An extension of maternity leave may be requested.
DTU: After the expiry of any compulsory post-natal leave, the woman is expected to report back to work. Legal provision should be made to grant flexible periods off so that the woman could attend to the child in hospital.
WAWU: Yes.

Ecuador. CONAMU: Yes. The leave should be extended until the child leaves hospital.
UGTE: Yes.

Egypt. Federation of Egyptian Industries: No.
Egyptian Trade Union Federation: Yes.

Estonia. Regulations should be flexible.

Ethiopia. Only if she has already postponed the portion of her maternity leave.

Finland. This should depend on the child's condition.
TT, LTK, Federation of Finnish Enterprises and KT: No. This should be left to the member States to decide.

France. CFDT: Yes. Notably in the case of a premature birth.
CGT-FO: Yes. This period should be taken into account in the postnatal leave.

Germany. It makes no sense from the point of view of the health of mother and child to draw a distinction between compulsory and non-compulsory maternity leave. It is also disadvantageous to the employer from the point of view of legal clarity and personnel planning.
DGB: No. The purpose of maternity leave is to protect the mother's health. For this case, other options should be made available.
DAG: Yes, but only if it is taken as parental leave.

Ghana. Provided a medical certificate is produced.
NCWD: Should be allowed more leave as recommended by a medical doctor of a government-recognized hospital.
GEA: No.

Honduras. Given that her presence is necessary to attend to her child.
COHEP: No. Legislation should provide for cases similar to illness during vacations, but this should not exceed two weeks.

India. Depending upon the health of the mother and the child.
National Front of Indian Trade Unions: No.

Indonesia. Based on health care considerations of mother and child.
APINDO: No. Another form of leave can be obtained.

Islamic Republic of Iran. Upon certification by the medical committee.

Iraq. General Federation of Trade Unions: Yes.

Italy. CONFINDUSTRIA: Should be handled through collective bargaining or national legislation.

Jamaica. JEF: Supportive, but leave should not be up until the child leaves the hospital.

Japan. The purpose of postnatal leave should be recuperation after confinement. Extending it for other purposes is inconsistent with the aim of maternity protection. If necessary, such extension should be considered within a different framework, such as the compatibility of work with child-rearing.

NIKKEIREN: Maternity refers to a condition inherent in the woman herself, and should not be expanded to refer to a condition of her child or spouse.

JTUC-RENGO: Yes.

Jordan. Amman Chamber of Industry: No. The maternity leave is provided for both mother and child and may not be postponed.

Republic of Korea. If maternity leave is made too flexible, it may bring about negative effects on employment and job security.

Lebanon. The woman should be entitled to go to work after the compulsory postnatal leave. A woman may take her unused annual leave for the purpose mentioned.

Lithuania. The period of maternity leave is fixed for the purpose of re-establishing the woman's health and should not be transferred.

Confederation of Lithuanian Entrepreneurs/Employers: Yes.

Centre of Lithuanian Trade Unions: Yes.

Lithuanian Labour Federation: Yes.

Lithuanian Workers' Union: Yes.

Unification of Lithuanian Trade Unions: Yes.

Malaysia. MEF: No. Maternity leave should be taken on a continuous basis with no breaks in between.

Mauritius. MEF: No.

Mexico. This benefit could be determined by way of collective bargaining. Maternity leave should not be extended because the child is hospitalized.

Morocco. Subject to agreement between her and her employer.

FCCIS: Yes.

CDT: Yes.

Mozambique. The necessary period, as determined by the physician, should be considered as sick leave.

Namibia. In principle no, but an exception on medical grounds should be provided for.

NEF: Yes. If agreeable with the employer and if there is no bearing on cash and medical benefits for the mother.

NUNW: Yes.

Netherlands. Deferment is not related to the essential purpose of the maternity leave, which is to provide a period for physical recovery. A solution could be found in the form of consecutive nursing leave or parental leave.

New Zealand. Given a goal of ensuring that a mother is able to care for her child, the manner in which such a goal should be achieved should be determined under national laws and regulations.

NZEF: The proposed provision would not necessarily present a satisfactory solution to a difficult situation.

Norway. According to national legislation, the maternity allowance period may be postponed if the child is admitted to a health institution, in which case the parents' right to leave is correspondingly extended. This presupposes that the child is admitted before the allowance period expires.

Pakistan. PNFTU: Yes.

Papua New Guinea. This depends on medical conditions.

Peru. This matter may be addressed through a collective or individual agreement.
CUT: These contingencies should be handled case by case.

Philippines. Only if the postponed period falls within the time frame of her maternity leave.

Portugal. CIP: The break in leave may extend the total period of absence from work with disadvantages for the operation of the enterprise. It should not be included in the Recommendation.

Qatar. How to consider absence from work due to the child's hospitalization would be problematic.

Romania. Postnatal leave should complement and alternate with leave to care for an ill child.
National Council of Private Small and Medium-sized Enterprises: Yes.
CSDR: Yes.

Saudi Arabia. Depending on national legislation.

Seychelles. An entitlement to sick leave on behalf of her child is prescribed under national law.

Slovenia. Only in the case of severe illness.

South Africa. This is a rather detailed circumstance that need not be included in the Recommendation.
BSA: Employers have to make special arrangements to accommodate the absence of women on maternity leave, especially where employees are in key positions or in the case of smaller enterprises. Any alternative plans must be arranged with the approval of the employer.

Spain. CIG: Yes.
CCOO: Yes. The leave is independent of the time off to care for the child. In any case, a form of optional leave should be considered for either the father or the mother to care for the child.

Suriname. FAL: No.

Switzerland. VSA: Yes.

Syrian Arab Republic. Leave must be continuous to protect the health of mother and child.

Togo. Maternity leave must be taken as a whole. No portion of it should be postponed.

Tunisia. To the extent possible.

Turkey. TISK: No. A provision could be included in the Convention making it possible to grant the mother additional postnatal leave, where necessary. There would no longer be any need to include the proposed provision in the Recommendation.

United Kingdom. Additional provision for other circumstances should be left to national law and practice.

United States. USCIB: The question highlights why States should not dictate the amount or timing of maternity leave.

Uruguay. National Chamber of Commerce and Chamber of Manufacturers: No.

Viet Nam. It is overly protective and may lead employers not to want to employ women.

Zimbabwe. Should be extended within the limits of other leave. Postponement of maternity leave could prove counter-productive or women become a risk to employ.
ZCTU: Yes. As far as possible.

There was general support for this provision among governments and workers' organizations. It corresponds to *Point 15(5)* of the Proposed Conclusions. This Point was drafted to recall examples from national law which address the special circumstances of a woman whose child is hospitalized during the non-compulsory portion of her postnatal leave. Several replies affirmed the need for flexibility in such circumstances. The issue was raised as to whether the employer's agreement would be required.

A substantial number of governments and many employers' organizations opposed this provision. A significant number of replies viewed the purpose of maternity leave as primarily the rehabilitation of the mother's health, and noted that leave to care for a sick child once home from the hospital would serve a different purpose. Several replies raised the question as to whether the postponement of leave would even resolve the problem, considering that the mother might still be needed at the hospital on a regular basis. A number of replies favoured the provision of other types of leave to extend a woman's absence from work, such as parental leave, child care leave, unpaid leave, or other leave available to accommodate special circumstances. The question was raised as to whether the provision was too detailed for inclusion in the Recommendation.

In view of the support expressed for the provision, it was included in the Proposed Conclusions without change. The Conference may wish to address some of the issues raised in the replies which are set out above.

MATERNITY BENEFITS

Qu. 17 *Where practicable, should the cash benefits to which a woman is entitled during maternity leave and any extension be raised to the full amount of the woman's previous earnings or the amount taken into account for the purpose of computing benefits?*

Total number of replies: 101.

Affirmative: 78. Algeria, Angola, Argentina, Austria, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Cameroon, Chad, Chile, China, Colombia, Comoros, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Greece, Honduras, Hungary, Indonesia, Islamic Republic of Iran, Italy, Jamaica, Jordan, Kenya, Latvia, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Mexico, Republic of Moldova, Mozambique, Netherlands, Nicaragua, Niger, Oman, Pakistan, Papua New Guinea, Peru. Philippines. Portugal. Qatar. Romania. Russian Federation. San Marino. Seychelles. Slovakia. Slovenia. South Africa. Spain. Sri Lanka. Suriname. Switzerland. Syrian Arab Republic. Tajikistan. Togo. Trinidad and Tobago. Tunisia. Ukraine. United Arab Emirates. Uruguay. Viet Nam. Zimbabwe.

Negative: 10. Australia. Bahrain. Guyana. Japan. Republic of Korea. Namibia. New Zealand. Thailand. Turkey. United Kingdom.

Other: 13. Bulgaria. Canada. Central African Republic. Congo. Denmark. Ecuador. India. Kuwait. Lebanon. Morocco. Norway. Poland. Saudi Arabia.

Argentina. Benefits should be equal to previous average earnings.

CGT: Yes. Cash benefits should be directly linked to the woman's earnings and be sufficient to cover her basic needs.

Australia. A flat-rate benefit promotes greater equity given women's unequal rates of earnings in the workforce. In Australia, women receive either 100 per cent of earnings from their employers or a flat-rate lump sum from the Government. It would be inappropriate for government-funded social security to provide 100 per cent of women's earnings, as it would be inequitable and too costly.

ACTU: Yes.

Austria. A benefit equivalent to previous earnings is preferable.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes, i.e. the full amount of the woman's earnings, taking into account inflation.

Bahrain. There are no reasons requiring an increase in cash benefits during maternity leave. Only wages due for the stipulated period are to be considered.

Belgium. See Question 8.

Benin. COSI: Yes. It is imperative to apply this in Benin and in Africa to help families. This policy would make it possible to lower maternal and infant mortality rates which are still very high.

Brazil. In accordance with the national legislation in matters of social protection.

CNC and CNI: No.

CNF: The minimum should always be equal to that received during employment.

Bulgaria. Ministry of Labour and Social Policy: Yes; Ministry of Justice and European Legal Integration: No. Cash benefits during maternity leave are equal to 100 per cent of the base salary set in the labour contract.

Canada. Providing full salary replacement during maternity leave would create a considerable burden for public funds and/or private insurance plans or employers. On the other hand, it would ensure that women do not face financial hardship. This would also facilitate a woman's ability to balance work and family responsibilities while her professional activity is interrupted.

CEC: Countries must make reasonable efforts to diminish the economic impact of maternity upon the employee. Nevertheless, this compensation must be in direct correlation with the financial capacity of countries.

CLC: Yes. Assuming there is a maximum amount set according to the average industrial wage.

Central African Republic. See Question 9.

Chile. It is inadmissible for maternity to involve any economic setback.
CPC: In line with her previous income.

China. The benefits during the maternity leave should match the amount of previous earnings. However, member States should be allowed to handle flexibly issues of extension or benefits resulting from "any extension".

Colombia. Benefits should remain the same as when the woman was working. In the case of supplementary leave, benefits could be equivalent to sickness benefits.

Congo. This amount should correspond to the total previous earnings in addition to the amount taken into account for the purpose of computing benefits.

Cuba. The amount taken into account for the purpose of computing benefits.

Cyprus. Provided that any reduction or waiving of taxes or social security contributions will be taken into account so that the net cash benefits will not exceed the net salary.

Czech Republic. UZS ČR: The full amount of previous earnings would be very demanding. Its implementation could only be left to national legislation. See answer to 9(1)(a)-(b).
ČMK OS: Yes. This should not be left to the will of national legislature.

Denmark. National legislation regulates maternity benefits.
DA: This should not be included in the Recommendation.
FTF: Countries must ensure possibilities of flexible schemes.
LO: Possibility should be provided to maintain and implement such regulations in collective agreements.

Dominica. CSA: Yes.
DAWU: Yes.
DTU: Yes.
WAWU: Yes.

Ecuador. The best solution is to set a percentage of the wage; as it increases, benefits will also rise.
CONAMU: Yes.
UGTE: Yes. A woman worker's income should not be reduced during maternity.

Egypt. Within the framework of the employed woman's wages.

Ethiopia. Provided that the condition permits and the practice is feasible.

Finland. Financial implications and problems in reconciling work and family life may discourage women from having children. In a society where the population is ageing, women should not be discouraged in their decisions concerning having children.
TT, LTK, Federation of Finnish Enterprises and KT: No. The amounts of social benefits depend on many different factors, including the financial resources of a country. Maternity benefits should not be given a special position among social benefits.

France. CNPF: No.

Germany. In general, a woman employee should not suffer any financial loss as a result of pregnancy or childbirth and should therefore be assured, during maternity leave, of an income equivalent to her previous net earnings. However, the employee should be required to meet certain conditions. Cash benefits equivalent to previous earnings are not increases in the sense implied by this question. Another question is who should pay the benefits.
BDA: No.

Ghana. To be determined by national circumstance.

GEA: No. No cash benefits apart from salary.

Guyana. Cash benefits should be based on the amount of earnings usually taken into account for computing benefits.

Honduras. Equivalent to the wages received or accruing to her.
COHEP: No. To prevent maternity from becoming a matter of financial gain and jeopardizing the integration of women at work. Such a measure on its own would be discriminatory against women.

India. It should be three-quarters of the average monthly emoluments computed for the previous three or six months.
AITUC: Yes. To the full amount of women's previous earnings.
Bharatiya Mazdoor Sangh: Yes. Members who can afford to do so should grant cash benefits equal to the full amount of the woman's previous earnings.
Centre of Indian Trade Unions: Yes.
INTUC: Yes.
National Front of Indian Trade Unions: Cash benefits should be equal to previous earnings and be related to productivity.

Iraq. General Federation of Trade Unions: Yes.

Japan. The amount or rate of cash benefits should be determined by each Member in accordance with that country's actual situation.
NIKKEIREN: If cash benefits were increased to the full amount of previous earnings, it would set an unreasonable, and therefore unacceptable, standard for reference. Paragraph 2(1) of Recommendation No. 95 is not a reasonable standard to use even as a reference and should be deleted.
JTUC-RENGO: Yes.

Jordan. Amman Chamber of Industry: Yes. If it is possible and budgets allow for it.

Republic of Korea. Where practicable, the level of cash maternity benefits should be increased on a long-term basis. However, since many countries cannot provide necessary leave and benefits yet, it is unrealistic to prescribe that maternity benefits should be raised to the full amount of the woman's previous earnings, even for the extension period. A practical approach to realizing the objectives of maternity protection should be preferred over a theoretical discussion separated from reality.
FKTU: Yes.

Kuwait. When the economy and social security system are sufficiently developed.

Latvia. The amount taken into account for the purpose of computing benefits.

Lebanon. The realization of this objective depends on the financial circumstances of individual States.

Lithuania. Lithuanian Labour Federation: No.

Malaysia. MAPA: No.
MEF: No. Basic earnings only.
MTUC: Yes. Payment in full.

Mauritius. MEF: See Question 9.

Mexico. Cash benefits should be equal to the full amount of the woman's earnings.

Morocco. Where practicable, to the amount used for the purpose of computing benefits.
FCCIS: Yes.
CDT: Yes.

Mozambique. Each member State should decide on these matters.
OTM: Benefits should be based on her previous remuneration.

Namibia. See Question 9.
NEF: No. Any cash benefits should be consistent with a cut-off point stipulated in national legislation and policies.
NUNW: Yes.

New Zealand. The provision of cash benefits is a matter best dealt with by agreement between employer and employees or national laws and regulations. This question is premised on there being either a contributory social insurance scheme or universal coverage by the social welfare system of women on parental leave.

Norway. Maternity allowance is computed on the basis of the income of the person concerned.

Oman. Providing the amount of benefits is left to be determined by the entity for which the woman works.

Peru. CUT: The wording "or the amount taken into account for the purpose of computing benefits" should be dropped.

Philippines. The woman should be fully compensated during maternity leave. She would need as much, or even more, of her previous earnings, to ensure the full and healthy maintenance of herself and her child in accordance with suitable standards of living.

Poland. Maternity benefits are granted from the start at the rate of 100 per cent of a woman's remuneration.
KPP: Yes.
OPZZ: Yes.

Portugal. Yes. See Question 9(1).
CIP: The quantification of benefits should not be part of any international text; rather, it should be left to domestic legislation of member States.
UGT: Yes. This provision should be included in the Convention.

Saudi Arabia. Depending on national legislation.

South Africa. BSA: Any extension of benefits should be left to collective bargaining. It should not be included in a Recommendation.

Sri Lanka. Full amount of the previous earning should be taken into account for computing benefits.

Togo. In accordance with national labour law and practice.

Trinidad and Tobago. ECA: Unclear.
NATUC: Yes. Otherwise the woman's standard of living will be reduced.

Tunisia. Increasing benefits to 100 per cent of previous earnings should remain an option, not an obligation, taking into account the diverse economic capacities of countries and their social security systems.

Turkey. Provisions regarding cash benefits should be flexible.
TISK: The level of the cash benefits should be left to national practice.
TÜRK-IŞ: Yes.

United Kingdom. Members should be free to determine the level of maternity benefits according to national legislation, subject to a minimum rate linked to sickness benefit payments.

United States. USCIB: No. Maternity benefits should be treated on the same basis as any other disability.

AFL-CIO: Yes. Provided, however, that benefits should be supplemented through appropriate social assistance mechanisms if wage replacement alone is inadequate to provide a suitable standard of living for the woman and her children.

Uruguay. National Chamber of Commerce and Chamber of Manufacturers: No. In accordance with circumstances of each country and its national legislation.

Venezuela. CTV: Cash benefits should be paid in accordance with the rates provided under the social security system for leave.

Viet Nam. It depends on the circumstances of the country.

Zimbabwe. Benefits should be paid to the full amount, with social security providing for the other percentage.

ZCTU: Yes. Full cash benefits pursuant to Recommendation No. 95, Paragraph 2(1).

A convincing majority of replies favoured this provision which reflects Paragraph 2(1) of Recommendation No. 95. Broad agreement was evident regarding the principle that a woman should not suffer financial loss or have her health or that of her child put at risk due to lack of income during maternity leave.

As in Question 9(1)(a) and (b) above, many replies expressed a preference for one of the two methods — hence several of them consisted of a qualified answer that described their choice. For instance, twice as many of those replies favoured raising benefits to the full amount of the woman's previous earnings, rather than to the amount taken into account for the purpose of computing benefits. The Office has, however, retained the options of either raising a woman's benefits to the full amount of her previous earnings, or "of such of those earnings as are taken into account for the purpose of computing benefits", reworded to align with *Point 9(3)* reviewed earlier.

Several replies stressed that the level of benefits paid would depend upon the economic circumstances of each Member. A number considered that the level of cash benefits should be determined by national law, and that any extension of benefits should be determined through collective bargaining. One government expressed concern that provision of full salary replacement during maternity leave might create unnecessary burdens upon public or private insurance programmes, while another pointed out that the question presupposed the existence of a social security scheme within a country, which was not always the case. The wording "where practicable" in *Point 16* takes these considerations into account.

Point 16 of the Proposed Conclusions goes beyond the provision in Paragraph 2(1) of Recommendation No. 95, which only envisaged a cash benefit of 100 per cent of the woman's previous earnings taken into account for the purpose of computing benefits. Full income replacement was not envisaged. *Point 16* of the Proposed Conclusions, with slight modifications as noted above, contains the formulation retained by the Office.

Qu. 18 *To the extent possible, should the medical benefits referred to in Question 11 above include:*

(a) care given in a doctor's office, at home or in a hospital or other medical establishment by a general practitioner or a specialist;

(b) care given by qualified midwives or other maternity services at home, in hospital or other medical establishments;

(c) maintenance in hospitals or other medical establishments;

(d) any necessary pharmaceutical and medical supplies, examinations and tests prescribed by a medical practitioner or other qualified person;

(e) dental and surgical care?

Global reply to Question 18:

Total number of replies: 12.

Affirmative: 5. Australia, Hungary, Netherlands, Norway, Portugal.

Other: 7. Costa Rica, Japan, Mexico, New Zealand, Russian Federation, Switzerland, United States.

Subparagraph (a):

Total number of replies: 88.

Affirmative: 75. Algeria, Angola, Argentina, Austria, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria, Cameroon, Central African Republic, Chad, China, Colombia, Comoros, Congo, Croatia, Cyprus, Czech Republic, Ecuador, Egypt, El Salvador, Finland, France, Germany, Ghana, Greece, Guyana, Honduras, India, Indonesia, Islamic Republic of Iran, Italy, Jamaica, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Republic of Moldova, Mozambique, New Zealand, Nicaragua, Niger, Pakistan, Papua New Guinea, Peru, Philippines, Qatar, Romania, San Marino, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Thailand, Trinidad and Tobago, Tunisia, Ukraine, United Arab Emirates, United Kingdom, Uruguay, Viet Nam, Zimbabwe.

Negative: 6. Bahrain, Namibia, Oman, Syrian Arab Republic, Togo, Turkey.

Other: 7. Canada, Chile, Cuba, Denmark, Ethiopia, Norway, Saudi Arabia.

Subparagraph (b):

Total number of replies: 88.

Affirmative: 76. Algeria, Angola, Argentina, Austria, Bahrain, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria, Cameroon, Canada, Central

African Republic, Chad, China, Colombia, Comoros, Congo, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Finland, France, Germany, Ghana, Greece, Guyana, Honduras, India, Indonesia, Islamic Republic of Iran, Italy, Jamaica, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Republic of Moldova, Mozambique, New Zealand, Nicaragua, Niger, Pakistan, Papua New Guinea, Philippines, Qatar, Romania, San Marino, Seychelles, Slovakia, Slovenia, South Africa, Sri Lanka, Suriname, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Ukraine, United Arab Emirates, United Kingdom, Venezuela, Viet Nam, Zimbabwe.

Negative: 8. Cuba, Namibia, Oman, Peru, Spain, Syrian Arab Republic, Togo, Turkey.

Other: 4. Chile, Ethiopia, Morocco, Norway.

Subparagraph (c):

Total number of replies: 86.

Affirmative: 77. Algeria, Angola, Argentina, Austria, Barbados, Belgium, Benin, Botswana, Brazil, Bulgaria, Cameroon, Canada, Central African Republic, Chad, China, Colombia, Comoros, Congo, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Finland, France, Germany, Ghana, Greece, Guyana, Honduras, India, Indonesia, Islamic Republic of Iran, Italy, Jamaica, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Republic of Moldova, Mozambique, New Zealand, Nicaragua, Niger, Pakistan, Papua New Guinea, Peru, Philippines, Qatar, Romania, San Marino, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, Viet Nam, Zimbabwe.

Negative: 5. Bahrain, Namibia, Oman, Syrian Arab Republic, Togo.

Other: 4. Chile, Ethiopia, Morocco, Norway.

Subparagraph (d):

Total number of replies: 87.

Affirmative: 76. Algeria, Angola, Argentina, Austria, Bahrain, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria, Cameroon, Canada, Central African Republic, Chad, China, Colombia, Comoros, Croatia, Cuba, Cyprus, Czech Republic, Ecuador, Egypt, Estonia, Finland, France, Germany, Ghana, Greece, Guyana, Honduras, India, Islamic Republic of Iran, Italy, Jamaica, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Republic of Moldova, Mozambique, New Zealand, Nicaragua, Pakistan, Papua New Guinea, Peru, Philippines, Qatar, Romania, San Marino, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, Sri Lanka, Suriname, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, Viet Nam, Zimbabwe.

Negative: 6. Namibia, Niger, Oman, Spain, Syrian Arab Republic, Togo.

Other: 5. Chile, Denmark, Ethiopia, Morocco, Norway.

Subparagraph (e):

Total number of replies: 85.

Affirmative: 68. Algeria, Angola, Argentina, Austria, Barbados, Belgium, Benin, Botswana, Brazil, Bulgaria, Cameroon, Canada, Central African Republic, Chile, Colombia, Comoros, Croatia, Cuba, Cyprus, Czech Republic, Ecuador, Egypt, Estonia, Finland, Ghana, Greece, Guyana, Honduras, India, Islamic Republic of Iran, Italy, Jamaica, Jordan, Republic of Korea, Latvia, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Republic of Moldova, Mozambique, Nicaragua, Niger, Pakistan, Papua New Guinea, Peru, Philippines, Qatar, Romania, San Marino, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, Viet Nam, Zimbabwe.

Negative: 8. Bahrain, China, Germany, Namibia, Oman, Suriname, Syrian Arab Republic, Togo.

Other: 9. Chad, Congo, Denmark, Ethiopia, Kuwait, Lebanon, Morocco, New Zealand, Norway.

Algeria. (d) As part of maternity coverage if linked to childbirth. Otherwise, as part of health insurance benefits. (e) If medically justified and as part of health benefits, rather than maternity benefits.

Argentina. CGT: Yes to (a)-(e). (a) Specialized medical care should be available during pregnancy and confinement, as should specialist neonatal care for the baby. Continuity of care must be guaranteed. (b) Care should be provided by suitable staff, wherever possible in reputable establishments which observe high standards of hygiene.

Australia. (a)-(e) Australian residents have access to most health benefits associated with maternity free of charge through the universal health-care system. In countries where there is no universal health-care system, such benefits could be provided through a variety of insurance mechanisms.

ACTU: Yes to (a)-(e).

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes to (a)-(e).

Barbados. (a) Provided through public health care.

Belgium. CNT: (a)-(e) There is no need to enter into such detail. The text should provide that necessary care be given. The importance of preventive, rather than simply curative, health care should be stressed.

Benin. COSI: Yes to (a)-(e). This policy would make it possible to lower maternal and infant mortality rates which are still very high in Africa.

Brazil. CNC and CNI: Yes to (a)-(d). (e) Surgical care, yes; dental, no.
CNF: No to (a); yes to (b) and (d)-(e). (a) Always by a specialist. (b) Only in the absence of a specialist.

Canada. (a) Public health insurance in Canada covers the necessary levels of medical benefits. (b) To the extent that midwives are provided for under the national health care system. (c)-(e) To the extent covered by public health insurance.
CEC: (a)-(e) This point is not appropriate in a Convention on labour standards.
CLC: Yes to (a)-(d).

Chad. (e) Yes to surgical care; no to dental care.

Chile. (a) Appropriate health care requires the involvement and supervision of a competent medical practitioner. Care at home should be considered only when, for health reasons, it becomes impossible to transfer the woman to a clinic. Nevertheless, much of this care can be provided by a midwife. (b) Include "at the surgery" and with the same reservation regarding care at home. (c) Whenever ordered by the practitioner. (d) With a maximum limit to restrain excessive medical prescriptions, but in extreme circumstances envisaging coverage in excess of that limit.
CPC: (a)-(d) Yes. In accordance with the health plan the woman has contracted. (e) If included in the woman's health plan.

China. (a) Care should generally be provided by a general practitioner or a midwife, and, if necessary, by a specialist. This would contribute to reduction of expenses. (c) Only when necessary. (d) However, "any necessary ..." should be consistent with the basic criteria of medical practice in each country. (e) In principle, no. It is not appropriate to mix dental care and maternity care. Surgical care should be confined to care of unusual childbirth, such as perineal section or Caesarean birth.

Congo. Yes to (a)-(d). (e) Could be left to the discretion of each State.

Costa Rica. (a)-(e) Medical benefits payable before, during and after confinement should be sufficient to ensure good and healthy conditions for the mother and her child, as determined in national legislation and in accordance with the prevailing social security system.

Cuba. (a) It should include care given by a general practitioner or specialist depending on the circumstances of the pregnancy, in a doctor's office or a hospital, and should also include stomatological care. (b) One should seek to have access to the most qualified medical personnel possible. (c) Depending on the conditions of the pregnancy and national circumstances.

Czech Republic. UZS ČR: (a)-(e) Yes. Health services should be provided in full, including to immigrant and unemployed women.
ČMK OS. (a)-(e) Yes. Not to be left only to national legislation.

Denmark. (a) Health benefits should be of such a quality that the health of mother and child is not jeopardized. (d) Rules on medical benefits should be laid down nationally. (e) Dental care should depend on individual countries' practice.
DA: (a) ILO should not set the standard in its instruments.

Dominica. CSA: No to (a), (b) and (d). Yes to (c) and (e). (e) Only if related to pregnancy.
DAWU: Yes to (a)-(e).
DTU: No to (a)-(c); yes to (d)-(e). (a) This could give rise to abuse. (b) Cost of leave and services should be related to state institutions. The woman should have a choice, but any additional costs based on her choice should rest with her.

WAWU: Yes to (a)-(e). (e) Dental care is usually crucial during pregnancy.

Ecuador. UGTE: Yes to (a)-(e). (a) Professional assistance should include all essential care.

Egypt. (a)-(e) According to the provisions of the medical insurance law.

Egyptian Trade Union Federation: (a)-(e) Yes. In accordance with legislation and regulations in force in each State.

Estonia. (e) Extremely important to include in a Recommendation.

Estonian Association of Trade Unions: Yes to (a)-(e).

Ethiopia. (a)-(e) Many of the provisions are fixed in collective agreements. (e) Depends on the health service provided.

CETU: Yes to (a)-(d); no to (e).

Finland. TT, LTK and Federation of Finnish Enterprises: No to (a)-(e).

France. CNPF: Yes to (a)-(e).

CFDT: Yes to (a)-(e). (e) Surgery related to pregnancy. Dental problems aggravated by pregnancy.

CFE-CGC: Yes to (a)-(e).

CFTC: Yes to (a)-(e). (c) With no time-limit. (e) Dental care in the event of great difficulties.

CGT-FO: Yes to (a)-(e).

Germany. (e) These come under normal sickness benefits, as opposed to maternity benefit.

BDA: Yes to (a)-(e).

DGB: Yes to (a)-(e).

DAG: Yes to (a)-(e).

Ghana. NCWD: Yes to (a), (b) and (e). (b) Registered midwives and registered maternity services. (c)-(e) A portion.

GEA: Yes to (a)-(e). (e) Not the provision of dentures.

India. AITUC: Yes to (a)-(d). (a)-(d) These should be free for pregnant women.

Bharatiya Mazdoor Sangh: Yes to (a)-(e). (b) There must be freedom to use the best available services. (e) If associated with maternity.

National Front of Indian Trade Unions: No to (b). (a) As required. (c) In hospital or in establishments where costs are equal to hospitals. (e) Surgery in the event of complicated labour.

Indonesia. (a)-(e) As mentioned in Recommendation No. 95, Paragraph 2(2).

APINDO: (a)-(e) Yes. At the discretion of the company.

Iraq. General Federation of Trade Unions: Yes to (a).

Italy. CONFINDUSTRIA: (a)-(e) Should be handled through collective bargaining or national legislation.

Jamaica. JEF: Yes to (a)-(d). (e) Yes to surgical care, no to dental care.

Japan. (a)-(e) It is not necessary to provide medical benefits in kind. It should also be permitted to provide the woman with cash to help with the medical expenses, separate from the cash benefits for maintenance of living. See Questions 8 and 11.

NIKKEIREN: (a)-(e) In Japan, medical benefits include (a) to (e).

JTUC-RENGO: Yes to (a)-(e).

Jordan. Amman Chamber of Industry: No to (a)-(e). The employer has nothing to do with medical benefits, and is only responsible for granting maternity leave by law.

Federation of Jordanian Chambers of Commerce: Yes to (a)-(d). No to (e).

Republic of Korea. (a)-(e) Each member State should offer a broad range of medical services to its full capacity, within the framework of the social security system, including through health insurance.

KEF: No to (b) and (e).

Kuwait. (e) Dental care should be restricted to pathological cases and attention should be paid to prevention. Expensive plastic surgery should be avoided.

Lebanon. (a)-(d) To the extent possible, in accordance with national legislation. (e) Dental and surgical care is provided for under national legislation, but entitlements and benefit award methods are determined by ministerial decree.

Lithuania. (e) Only urgent assistance.

Confederation of Lithuanian Entrepreneurs/Employers: Yes to (a)-(e). (d)-(e) In accordance with insurance companies, medical funds and the employer's insurance.

Unification of Lithuanian Trade Unions: Yes to (a)-(d). No to (e).

Malaysia. (a)-(e) Subject to certain limitations.

MAPA: No to (a)-(e).

MEF: (a)-(e) No. Medical benefits extended to an employee normally exclude medical cases relating to pregnancy and childbirth.

MTUC: Yes to (a)-(d); no to (e). (a) At home, for delivery purposes.

Mali. Yes to (a)-(e). (a) Taking into account weaknesses in the health services in developing countries. (d) Qualifications should be supported by an authorization to practice. (e) In authorized establishments.

Mauritius. Yes to (a)-(e). (c) Under care of a general practitioner or specialist. (d) By a medical practitioner.

MEF: (a)-(e) Provided by state hospitals.

Mexico. (a)-(e) The clauses relating to medical benefits in this question should be more general and grouped together in terms such as medical, surgical, hospital and prophylactic care. It should be up to each country to define materials, places and specialities in its legislation.

Morocco. (b) Care given by midwives in public hospitals. (c) Maintenance in hospitals. (d) Necessary medicines and tests. *(e)* Surgery.

FCCIS: (a)-(e) To be negotiated between the social partners (collective agreement).

CDT: Yes to (a)-(e).

Mozambique. (b) Provided that quality care is guaranteed. (c) If better care and equipment are available. (e) If necessary.

OTM: Yes to (a)-(e). Depending on the level of development in each country.

Namibia. (a) Should be covered under medical aid schemes, not linked to maternity benefits.

NEF: Yes to (a)-(d); no to (e). (a)-(b) The role of the traditional birth attendant is vital in remote rural areas. To incorporate such services, home care should be included. (e) This specialized field needs to be considered separately.

NUNW: Yes to (a)-(e). (c) As long as medically related.

Netherlands. (a)-(e) On the understanding that the levying of a personal contribution (cost-sharing) is permitted and to the extent that the medical care is necessary in connection with the pregnancy and/or delivery.

FNV: (a)-(e) No cost-sharing should be permitted for costs relating to pregnancy and confinement. See Question 11.

New Zealand. (a)-(e) Medical benefits should be dealt with through the health system of member States, rather than under labour conventions. There should not be any mention of these benefits in any instrument adopted. (a) See Question 1. States should make every effort to ensure that adequate maternity medical benefits are provided. A general requirement that adequate health benefits be provided and that pregnant or nursing women and their children have access to those benefits would be as effective, if not more, than the provisions below. The exact benefits to be provided should be determined by national laws and regulations. (b) This matter should be decided by individuals in accordance with their own preferences, taking into account national laws and practices. (c)-(e) See 1 and 18(a). (c) Hospitalization should be available when needed. (d) Where resources are required to ensure that medical care is adequate, these should be made available as a part of those medical benefits. (e) The connection between dental care and pregnancy is not sufficiently evident to justify including this benefit. Surgical care, when required due to any pregnancy condition, should be provided for under reasonable medical benefits.

Nicaragua. (c) This is determined by social security. (e) It should be covered by social security.

Niger. (b) The woman should be placed in conditions which facilitate maternity. (c) Keeping costs in mind. (d) The employer could partially guarantee coverage at a given rate. (e) Keeping in mind the cost of certain dental and surgical care.

Norway. (a)-(e) The revised Recommendation should lay down guidelines for medical benefits under the Convention, as in Question 11. National legislation should, as far as possible, provide benefits specified in (a)-(e). (d) In Norway, outside hospitals and institutions, benefits are in general only paid to cover important medicines rather than any necessary medicine. (e) Not ordinary protective dental care.

Oman. (a)-(e) This is to be determined by national legislation or the procedures of the entity where the woman works, or according to the provisions of the contract concluded between the woman and the establishment.

Papua New Guinea. (a)-(e) So long as women workers are covered under superannuation schemes or medicare.

Peru. CUT: Yes to (a)-(e).

Poland. KPP: Yes to (a)-(e).
OPZZ: Yes to (a)-(e).

Portugal. (a)-(e) As far as possible.
CIP: (a)-(e) Specification of medical benefits should not be part of an international instrument but should be left to national legislation.
CAP: Yes to (a)-(e).
CGTP: Yes to (a)-(e).

Qatar. (a)-(e) Provided that the assistance granted is related to pregnancy and childbirth.

Romania. National Council of Private Small and Medium-sized Enterprises: Yes to (a), (c) and (e). No to (b) and (d). (b) Could be included in collective agreements according to available resources. (d) Only medical and pharmaceutical products prescribed by a medical practitioner, whether a regular doctor or a specialist recommended by the regular doctor. (e) Only those relevant to the pregnancy.

Russian Federation. (a)-(e) Such benefits are provided under national legisiation.

Saudi Arabia. (a) Depending on national legislation.

South Africa. Yes to (a)-(e). (e) If dental and surgical care are related to the pregnancy.
BSA: (a) Great care should be taken to ensure that medical benefits should not be exploited and should not be provided to the detriment of other employees or needy people. (e) It might be difficult to prove a direct link between pregnancy and the required dental work.

Spain. (a) As far as possible. The examples listed go far beyond Paragraph 2(2) of Recommendation No. 95. (e) If arising out of maternity. Dental and surgical protection established without restrictions seems excessive.
CIG: Yes to (a)-(e).
CCOO: Yes to (a)-(e).

Suriname. (e) We do not see any direct relation between dental care and maternity.
ASFA: Yes to (a)-(d). (e) Not unless the need for dental or surgical care results from pregnancy.
FAL: Yes to (a)-(e).

Switzerland. (a)-(e) Consider shifting these provisions to the Convention to supplement Question 11.
VSA: Yes to (a)-(e).

Syrian Arab Republic. (a)-(e) This should be left to national laws and regulations.

Trinidad and Tobago. ECA: Yes to (a)-(d). No to (e).
NATUC: Yes to (a)-(e).

Turkey. (a)-(b) This should be left to national legislation.
TISK: (a)-(e) The benefits granted during maternity will be proportionate to the economic situations of individual member States, which are at varying levels of development. Medical benefits should be determined through the law and practice of each member State.
TÜRK-İŞ: Yes to (a)-(e).

United States. (a)-(e) Maternity benefits should be provided on the same basis as other medical benefits.
USCIB: No to (a)-(e).
AFL-CIO: Yes to (a)-(e). (e) If necessary for the health and well-being of the mother or child.

Uruguay. National Chamber of Commerce and Chamber of Manufacturers: (a)-(e) No. In accordance with law and circumstances of each country.

Venezuela. CTV: Yes to (a)-(e).

Zimbabwe. (a)-(e) Either through an existing medical aid scheme or at the expense of the employee.
ZCTU: Yes to (a)-(e). (d)-(e) If connected to maternity care.

Most governments, as well as employers' and workers' organizations, supported this provision, which elaborates further upon the provision of medical benefits contained within *Points 9(1)* and *9(5)* of the Proposed Conclusions. The proposal recalls the substance of Paragraph 2(2) of Recommendation No. 95. A large number of replies emphasized that medical services related to pregnancy should be provided in accordance with national laws and regulations or collective agreements. A few objections viewed medical benefits provided during maternity leave as more appropriately linked with state-run medical aid schemes, rather than with maternity leave. Some stated that benefits should be provided in accordance with a woman's health care plan. Some governments, as well as employers' organizations, explicitly stated that employers should not be responsible for providing medical benefits. A few questioned the appropriateness of including a list of medical services in an international instrument on labour standards. Slightly less support was evident for subparagraph (e), regarding the provision of dental and surgical care, than for the other types of care mentioned in (a)-(d). Some saw little causal link between pregnancy and dental care and questioned whether (e) was necessary within a Recommendation on maternity protection.

The Office views the use of the phrase "should include" within this point to imply that the medical services enumerated are non-exhaustive. Members may provide additional medical benefits, in accordance with national laws and regulations, collective agreements, private insurance schemes or level of development. Therefore, the phrase in accordance with "national laws or regulations" was not included, or one similar to 2(5) of Recommendation No. 95. The Office considers that other medical services than those provided for by the Member, including those provided in accordance with private insurance schemes, could be taken into account. This provision has been included as *Point 17* of the Proposed Conclusions.

FINANCING OF BENEFITS

Qu. 19 *Should the cash and medical benefits be provided:*

(a) through compulsory social insurance;

(b) through public funds;

(c) in a manner determined by national law and practice?

Global reply to Question 19:

Total number of replies: 7.

Affirmative: 1. Australia.

Other: 6. Denmark, Hungary, Mexico, Norway, Poland, Portugal.

Subparagraph (a):

Total number of replies: 74.

Affirmative: 53. Algeria, Argentina, Barbados, Belarus, Benin, Brazil, Cameroon, Central African Republic, China, Colombia, Comoros, Congo, Croatia, Cyprus, Czech Republic, Ecuador, Egypt, Estonia, France, Greece, Guyana, Honduras, India, Indonesia, Islamic Republic of Iran, Italy, Jamaica, Jordan, Kuwait, Latvia, Lithuania, Mali, Mauritius, Republic of Moldova, Mozambique, Namibia, Netherlands, Nicaragua, Oman, Papua New Guinea, Peru, Philippines, San Marino, Slovakia, Suriname, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Ukraine, United Kingdom, Viet Nam, Zimbabwe.

Negative: 19. Bahrain, Botswana, Bulgaria, Cuba, Ethiopia, Ghana, Kenya, Republic of Korea, Malaysia, New Zealand, Niger, Pakistan, South Africa, Spain, Sri Lanka, Syrian Arab Republic, Turkey, United Arab Emirates, United States.

Other: 2. El Salvador, Luxembourg.

Subparagraph (b):

Total number of replies: 59.

Affirmative: 26. Barbados, China, Colombia, Croatia, Cuba, Cyprus, Czech Republic, Estonia, Guyana, Jamaica, Jordan, Kuwait, Lithuania, Luxembourg, Mauritius, Republic of Moldova, Mozambique, Netherlands, Nicaragua, Papua New Guinea, Peru, Philippines, Trinidad and Tobago, Ukraine, United Kingdom, Viet Nam.

Negative: 32. Bahrain, Benin, Botswana, Brazil, Bulgaria, Central African Republic, Cameroon, Ecuador, Egypt, Ethiopia, Ghana, Honduras, Kenya, Republic of Korea, Mali, Namibia, New Zealand, Niger, Oman, Pakistan, Slovakia, South Africa, Spain, Sri Lanka, Suriname, Syrian Arab Republic, Tajikistan, Thailand, Turkey, United Arab Emirates, United States, Zimbabwe.

Other: 1. India.

Subparagraph (c):

Total number of replies: 84.

Affirmative: 79. Angola, Bahrain, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Cuba, Cyprus, Czech Republic, Ecuador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Guyana, Honduras, India, Jamaica, Japan, Jordan, Kenya, Republic of Korea, Kuwait, Lithuania, Mali, Mauritius, Republic of Moldova, Morocco, Mozambique, Namibia, Netherlands, New Zealand, Nicaragua, Niger, Norway, Oman, Pakistan, Papua New Guinea, Peru, Philippines, Qatar, Romania, Russian Federation, San Marino, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Switzerland, Syrian Arab Republic, Togo, Trinidad and Tobago, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Viet Nam, Zimbabwe.

Negative: 3. Algeria, Egypt, Thailand.

Other: 2. Austria, Lebanon.

Algeria. (a) In countries without obligatory social insurance schemes, at least provide free medical benefits through the public health structures.

Argentina. CGT: Yes to (a); no to (b) and (c). (b) Public funds should provide complementary benefits and cover cases where benefits are not available from other sources. (c) Social security contributions by employers should finance medical insurance and the necessary benefits.

Australia. (a)-(c) All of the above options should be acceptable methods for the provision of benefits.

ACTU: (b) Provision of benefits through public funds has the advantage that the availability of benefits is not dependent on previous workforce status. *(c)* Yes. The instrument should also provide that benefits may be provided by employers in the public and private sectors through collective agreements.

Austria. (c) The question of financing should be determined with reference to Article 53(2) of the revised European Code of Social Security.

BAK: Yes to (a)-(c). (b) A minimum level of benefits for those who are aninsured.

ÖGB: Yes to (a).

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes to (a)-(c). (a) Only cash benefits. (b) Medical benefits.

Belgium. (c) If benefits are financed by employers' contributions, the level of contribution must be reasonable to avoid negative effects on women's employment.

Benin. (b) The economic situation of developing countries may not allow public funding at the current time.

COSI: Yes to (a)-(c).

Botswana. (c) To take into consideration the economic and social development of the member State.

Brazil. (a) In accordance with the legislation of the member State in matters of social protection.

CNC and CNI: No to (a)-(b); yes to (c).

CNF: Yes to (a) and (c). (a) Available to all without distinction.

Canada. CEC: (c) To be determined by national legislation.

CLC: Yes to (a)-(b).

Central African Republic. (b) The current economic context would hardly permit such expenditure. (c) On condition that it is effective.

Chile. (c) Whatever the system of financing established, the Convention should establish one guiding principle: society as a whole should bear the responsibility for the cost of maternity, since, in the long term, it will enjoy the ensuing benefits.

CPC: Yes to (c).

China. (a) Cash benefits resulting from extension of maternity leave should not be paid by compulsory social insurance. (b) To provide benefits that fall beyond statutory maternity insurance, public funds or social assistance funds should be established.

Colombia. (a) Legislation on maternity benefits should specify how they are to be financed.

Comoros. (a) So as not to increase the cost to employers and to ensure benefits.

Croatia. (a) Financing of benefits should be regulated by the Convention, not the Recommendation.

Croatian Association of Employers. Financing could be regulated by the Recommendation.

Cyprus. (a)-(c) To be transferred to the Convention with the understanding that (a), (b) and (c) are alternative methods.

Denmark. (a)-(c) This should be decided in accordance with national law and practice.

Dominica. CSA: No to (a) and (b); yes to (c). (a) Through voluntary social insurance. The level of benefits would vary according to contributions.
DAWU: Yes to (a)-(c).
DTU: Yes to (a)-(c).
WAWU: Yes to (a).

Ecuador. (b) Both public and private.
CONAMU: Yes to (b).
UGTE: Yes to (a)-(b). (a) Also by the enterprise that employs the woman. (b) For women not covered by compulsory social insurance.

El Salvador. (a) In El Salvador, cash and medical benefits are financed by social security.

Estonia. (c) All forms would be included.

Ethiopia. (a) May not be practicable in most developing countries where the economy is not strong enough to provide medical benefits through social insurance. (b) Similar to 19(a).
CETU: (c) Yes.

Finland. (a)-(c) Should be determined by national law and practice, but no mother should be excluded from medical services.
TT, LTK and Federation of Finnish Employers: No to (a)-(b).
KT: Yes to (a)-(b).
SAK, STTK, AKAVA: Yes to (a)-(b).

France. CNPF: Yes to (c).
CFDT: Yes to (a) and (c). (a) Social insurance covering all women, including the unemployed. (c) Following consultation with the social partners.
CFE-CGC: Yes to (a) and (c).
CFTC: Yes to (a)-(b). (a) Through a social security-type entity. (b) To avoid disparities among employed women. No to (c), except for countries which already have obligatory social insurance.
CGT-FO: Yes to (a); no to (b)-(c). (b) Unless (a) is not applicable.

Germany. (b) Exactly how the costs of medical benefits and cash benefits are shared is a matter for national legislation. Making employers bear the full cost of maternity protection would be just as unrealistic as relieving them of any responsibility.
BDA: No to (a) and (c); yes to (b). (b) Maternity benefits should be financed entirely from public funds. Under no circumstances should the employer be made liable for the cost of maternity benefits. Individual employer liability for the cost places women at a disadvantage in the labour market.
DGB: Yes to (a)-(c). (c) The employer should supplement the benefits.
DAG: Yes to (a) and (c). (a) The employer's share of the costs should be determined by national legislation. (c) Employers should contribute in order to provide additional benefits.

Ghana. NCWD: Yes to (a)-(c).
GEA: Yes to (a) and (c). (c) To ensure consistency in practice.

Guyana. (b) Public funds can be used to provide social assistance to the unemployed.

Honduras. (b) Employers, workers and the State must make their contribution.
COHEP: Yes to (a) and (c); no to (b). (b) This is dealt with on a tripartite basis.

Hungary. (a)-(c) Means of financing should not be restricted. The efficiency of financing should be the primary consideration.

India. (b) Public funds plus social insurance in the informal/unorganized sector.
AITUC: Yes to (b)-(c). (a)-(c) Paid leave and other benefits should be provided by the employer.
Bharatiya Mazdoor Sangh: Yes to (a)-(c).
Centre of Indian Trade Unions: Yes to (a)-(c).
HMS: Yes to (a)-(c).
INTUC: Yes to (a)-(c).
National Front of Indian Trade Unions: Yes to (a); no to (b). (c) The state of the economy should be taken into account and the law should also check the population explosion.

Islamic Republic of Iran. (a) According to the protective system in the country.

Iraq. General Federation of Trade Unions: Yes to (a) and (c); no to (b).

Italy. CONFINDUSTRIA: (c) Should be handled through collective bargaining or national legislation.

Japan. NIKKEIREN: (a)-(c) The provision should allow member States to choose among items (a) to (c) according to their actual circumstances.
JTUC-RENGO: Yes to (a)-(c).

Jordan. Federation of Jordanian Chambers of Commerce: Yes to (a); no to (b)-(c).

Kenya. (c) To be determined through both individual contracts and collective agreements.

Republic of Korea. Each member State should be allowed to search for the most appropriate schemes for its own reality, given the complex problems posed by the introduction and adoption of such scheme.

Kuwait. (b) In countries where there are no social security systems.

Lebanon. (c) In Lebanon, cash and medical benefits are provided in a variety of manners to private sector employees, civil servants and members of the armed forces.

Lithuania. Confederation of Lithuanian Entrepreneurs/Employers: (a)-(c) In accordance with the law.
Centre of Lithuanian Trade Unions: Yes to (a)-(c).
Lithuanian Workers' Union: Yes to (a)-(c). (c) Legislation should specify procedures for the terms and payment of benefits.

Luxembourg. (a) If contributions to obligatory social insurance are paid by all workers.

Malaysia. (a) Depending on contract of service.
MAPA: No to (a)-(b); yes to (c).
MEF: No to (a)-(b); yes to (c). (a) Social insurance should not be compulsory
MTUC: Yes to (a) and (c); no to (b). (a) This item should be left to the discretion of employees.

Mali. (a) With contributions from workers and employers.

Mauritius. (a) When such insurance exists. (b) With respect to medical benefits only. (c) Cash benefits to be defrayed by employer.
MEF: No to (a)-(b); yes to (c).

Mexico. (a)-(c) According to the provisions of national law and practice. Cash and medical benefits are generally financed in different ways.

Morocco. FCCIS: Yes to (a) and (c). (b) If possible.
CDT: Yes to (a) and (c).

Mozambique. (a) To guarantee such benefits. (b) In order to cover all women irrespective of their social condition.
OTM: Yes to (c).

Namibia. (a) Cash maternity benefits only, and only for contributing members.
NEF: Yes to (a) and (c); no to (b). (b) Special funding is necessary to avoid draining vital resources.
NUNW: Yes to (a)-(c).

Netherlands. (a) On account of the desirability of women participating in the workforce, payment should be made by the social security system rather than by the employer. (b) This possibility must be kept open.
FNV: Yes to (a)-(b). This provision should be included in the Convention. No question was raised about Article 4(8) of Convention No. 103, providing that "in no case shall the employer be individually liable for the cost of such benefits due to women employed by him". Such an article is of crucial importance. Employer liability is a disincentive to employers to employ women of child-bearing age.

New Zealand. (a) Any instrument should specify a standard to be achieved rather than a method of benefit provision. The questionnaire anticipates the provision of social services, and thus income maintenance, based upon a contributory social insurance system. It does not consider whether the use of a taxation funded means tested benefit scheme could equally, or more efficiently, deliver income support to those who are in need of such support. (c) Reference to any specific form of provision of benefits will prevent many countries from ratifying the Convention. The benefits being considered in this questionnaire reflect the provision of social services generally provided in a westernized democracy and ignores the possibility that better overall benefits could well be provided through protection of the right to return to work, with a scheme of supplementary benefits provided through means tested income support provided through general taxation to those in need.
NZEF: (a) No. Various means of implementation should be suggested, not prescribed.
NZCTU: (a)-(c) The Convention should allow for choice between compulsory social insurance and public funds.

Niger. (a) Many countries have no compulsory social insurance scheme. (b) Some States facing economic difficulties cannot meet the costs effectively. (c) Each State in collaboration with the social partners should see how best to ensure the provision of benefits.

Norway. (a)-(c) Under Norwegian legislation, employed women are compulsorily insured and have to pay social security contributions if their earnings exceed a certain amount. The employer also contributes. (c) The individual member State is best placed to decide this issue.

Oman. (b) Not needed if other sources of finance are available.

Pakistan. PNFTU: Yes to (a)-(c). (b) If compulsory social insurance is not available.

Papua New Guinea. (c) As long as the legislation adequately protects women.

Peru. CUT: Yes to (a)-(b). Reference to national law and practice should be dropped. These should be adapted to the provisions of the Convention.

Poland. (a)-(c) The maternity benefit in Poland is financed through social insurance which, so far, has been compulsory for all employees. As of 1 January 1999, sickness and

maternity insurance will be compulsory for some people engaged in gainful activity and voluntary for others.
KPP: Yes to (c).
OPZZ: Yes to (c).

Portugal. (a)-(c) In Portugal, maternity protection and medical benefits are financed separately.
CIP: Yes to (c).
CAP: Yes to (c).
CGTP: Yes to (a).
UGT: (a), (b) or (c). This provision should be included in the Convention.

Romania. (c) In accordance with the level of economic development of each country.
National Council of Private Small and Medium-sized Enterprises. Yes to (a)-(c). *(b)* Only for those categories for whom other social benefits are also ensured through public funds.
CSDR: Yes to (a)-(c).

Slovakia. Confederation of Trade Unions of the Slovak Republic: (b) Quoted benefits should be paid through public funds for selected groups of persons.

South Africa. BSA: (a) The question of equity has to be considered. Any benefit should be part of a holistic social security system based on affordability within a particular country.

Spain. (c) This should be included in the Convention.
CIG: (a) Yes. Public social insurance.
CCOO: Yes to (b).

Sri Lanka. (a) Cash benefits should be provided by the employer, while medical benefits are to be provided by the insurance scheme.

Suriname. ASFA: No to (a)-(b); yes to (c).
FAL: Yes to (a) and (c); no to (b).

Switzerland. (c) The Convention could include a provision on the financing of benefits.
VSA: (a)-(c) Yes. Alternatively or cumulatively (a), (b) and (c).

Trinidad and Tobago. ECA: Yes to (a) and (c); no to (b).

Turkey. TISK: (a)-(c) Allowing the member States as much freedom as possible with regard to the financing of cash and medical benefits will improve implementation. The inclusion in the Recommendation of different methods for providing maternity benefits and the possibility of a combined system would promote a positive attitude to the Convention on the part of member States whose practices still differ in this field. It would also provide a means of observing the most effective practices. Nonetheless, no additional payment obligations must be imposed on employers.
TÜRK-IŞ: No to (a) and (c); yes to (b).

United Kingdom. (a) and (b) Subject to national arrangements.

United States. (c) With the understanding that a Member can decide that this can be a discretionary benefit.
USCIB: No to (a)-(b); yes to (c).
AFL-CIO: (c) Yes. Provided that an adequate safety net should be in place to ensure that cash and medical benefits are available to all, regardless of funding mechanisms.

Uruguay. National Chamber of Commerce and Chamber of Manufacturers: No to (a)-(b); yes to (c).

Venezuela. CTV: Yes to (a) and (c).

Zimbabwe. ZCTU: Yes to (a) and (c). (c) If it can improve on (a) above.

The replies to this question revealed the complexity surrounding the financing of benefits. Subparagraphs (a) and (b) reflect the substance of provisions of Conventions No. 3 (Article 3(c)) and No. 103 (Article 4 (4)), which specify that cash and medical benefits shall be provided by means of social insurance or public funds. Subparagraph (c) is a new provision which would allow a Member to provide cash and medical benefits in a manner determined by national law and practice.

Subparagraph (c) was included in the questionnaire as an additional method to the two others provided for under Conventions No. 3 and No. 103 to acknowledge the wide variety of ways in which cash and medical benefits are provided at the national level — a point referred to in a number of replies. Under many national systems, cash and medical benefits are provided through separate systems which may, in turn, mix both public and private sources of financing. In addition, as pointed out by one government, different sectors may be covered by separate schemes. Given the complexity of financing arrangements, many replies indicated that individual countries should be permitted to determine the system of financing most suited to their own economic circumstances and level of economic development

Subparagraph (c) was favoured by a wide majority of governments and employers' organizations, and received considerable support from workers' organizations, garnering very few negative replies overall. While subparagraph (c) gained the most support, more than half of the governments which supported subparagraph (c) did so in combination with subparagraphs (a) or (b); close to one-third of those supported a choice of all three options. A similar pattern was found in the replies from employers' and workers' organizations, although among workers' organizations, subparagraph (a) gained somewhat wider support.

The support for subparagraph (a) was quite strong among governments and workers' organizations, and received some support among employers' organizations. The comments reflected that maternity benefits are frequently financed through compulsory social insurance. It was recognized that through such systems, the burden of payment could be equitably distributed, and coverage would be ensured. Those replies that were not in favour pointed out that the level of economic development in some countries could not support a system of compulsory social insurance.

Subparagraph (b) was not supported by a majority of those who replied. However, it did receive substantial support from governments and workers' organizations. This option also relates to Article 4(5) of Convention No. 103 which provides that benefits, in the form of social assistance, paid to women who do not qualify for benefits as a matter of right, shall be paid from social assistance funds. A number of the comments pointed to public funds as an important complementary source of benefits for women workers in need who did not qualify under social insurance, or as a form of social assistance where no social insurance system existed. Accordingly, in nearly every instance in which a government, or employers' or workers' organization supported subparagraph (b), it was in combination with subparagraph (a). Public funding was also raised as a possibility where other funding sources did not exist. Recalling that cash benefits and medical benefits are often funded differently, several replies emphasized that public funds were used to finance medical benefits in their countries.

Given that subparagraphs (a), (b) and (c) received substantial support, the Office drafted *Point 19* to allow a choice of any of the methods of financing benefits or a combination of them. The Office acknowledges that a question arises as to the rationale for including subparagraphs (a) and (b) when subparagraph (c) would cover either system of financing. The Office considered it desirable to state these methods in the Recommendation to provide guidance to Members, recognizing at the same time that maternity benefits have commonly been financed through compulsory social insurance systems often supplemented by public funds. Several replies, however, wished to address the method of financing of benefits in the Convention, rather than in the Recommendation.

A few replies questioned why no provision which would recall Article 4(8) of Convention No. 103 was proposed for inclusion. Article 4(8) provides that in no case shall employers be individually liable for the cost of maternity benefits due to women employed by them. The Office did not propose such a provision in view of the concerns raised that Article 4(8) posed an obstacle to ratification for many countries without developed social security systems. It also took account of the fact that in many countries, maternity benefits are provided through collective agreements or employer-financed arrangements. Given the complexity of the financing schemes, and the degree to which employer contributions are incorporated in national systems, the Office included subparagraph (c) to provide Members with the flexibility necessary to design a financing system for such benefits which would meet their national situation. In this regard, the Office notes that the formulation in *Point 18* would not meet the concern expressed by the Government of New Zealand for a taxation-funded means tested benefit scheme rather than an income-replacement scheme on which the present provisions were based. In order to take account of the concerns raised in some replies that allowing individual employer liability could result in discrimination against women, the Conference may wish to consider further parameters or safety nets to ensure that whatever financing system is adopted, it provides effective coverage and would not hamper women's participation in the workforce.

Qu. 20 *Should any contribution due under compulsory social insurance providing maternity benefits and any tax based upon payrolls which is raised for the purpose of providing such benefits, whether paid both by the employer and the employees or by the employer, be paid by and in respect of the total number of men and women employed, without distinction of sex?*

Total number of replies: 98.

Affirmative: 81. Algeria, Angola, Argentina, Australia, Austria, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Germany, Greece, Guyana, Honduras, India, Indonesia, Islamic Republic of Iran, Jamaica, Japan, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Mali, Mauritius, Mexico, Republic of Moldova, Mozambique, Namibia, Netherlands, Norway, Oman, Pakistan, Papua New Guinea, Peru, Philippines, Portugal, Romania, San Marino, Slovakia, Slovenia, South Africa, Spain, Suriname, Switzerland, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, Uruguay, Viet Nam, Zimbabwe.

Negative: 7. Bahrain, Ethiopia, Ghana, Niger, Sri Lanka, Syrian Arab Republic, United States.

Other: 10. Bulgaria, Congo, Denmark, Hungary, Morocco, New Zealand, Nicaragua, Poland, Qatar, Saudi Arabia.

Argentina. On the principle of solidarity.
CGT: Medical insurance must cover all workers, especially with regard to maternity benefits for women workers. Such insurance cover should not be limited due to lack of contributions.

Australia. In order to discourage discrimination on the basis of gender and not to discourage the hiring of women employees, any levy payable by the workplace to finance maternity benefits should not distinguish on the basis of gender.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Bahrain. This should be left to the legislation and practice in each country.

Belgium. Otherwise, it would be discriminatory.

Bulgaria. National Social Security Institute: No; Ministry of Health: Yes.

Canada. Contributions should be payable by all employees, regardless of sex.
CEC: To be determined by national legislation.

Chile. Practice has demonstrated that distinctions of sex result in discriminatory behaviour towards women workers.

China. It would fairly reflect gender equality and the "equity" principle of social security.

Colombia. On the basis of solidarity.

Congo. These benefits only concern employed women.

Denmark. This detailed rule does not belong in an ILO instrument.
Equal Status Council: Yes.
DA: In compliance with national law.
FTF: Yes.
LO: This provision should be included in the Convention.

Dominica. CSA: Yes.
DAWU: Yes.
DTU: Yes.
WAWU: Yes.

Ecuador. CONAMU: Yes. This contribution should be paid without distinction of sex, whether it is compulsory or voluntary social insurance to which only the workers contribute. Contributions without distinction of sex should, however, take account of positive discrimination.

Ethiopia. It should be determined by the collective agreements and upon the consensus of the employers and employee.
CETU: Yes. To eliminate gender discrimination.

Finland. TT, LTK and Federation of Finnish Enterprises: No. It should be left up to the individual countries to decide how contributions are determined.

France. CFDT: Yes. Otherwise, there could be a discriminatory effect on women's employment. Enterprises employing a large portion of women workers would be penalized.
CFTC: Yes. To avoid discrimination in hiring.

Ghana. NCWD: Yes.
GEA: Yes.

Honduras. COHEP: No. Payment should be on an equitable basis: government, workers, employers.

Hungary. The burdens of the relevant contributions should be borne without discrimination by the economically active part of society, in accordance with the provisions of national state insurance legislation.

India. National Front of Indian Trade Unions: Compulsory social insurance should include maternity benefits. All employees should be required to contribute their share equally with the employer.

Iraq. General Federation of Trade Unions: No.

Japan. The wording "men and women employed" might be interpreted to include people for whom such systems do not apply for some reason other than distinction of sex. To avoid this, "be paid in respect of ... without distinction of sex" should be replaced by "be paid in a manner determined by national law and practice, without distinction of sex".

Lithuania. Unification of Lithuanian Trade Unions: No.

Malaysia. MAPA: No.
MEF: No.
MTUC: Yes. For men, the benefits would be extended to their spouses.

Mali. To avoid discrimination.

Morocco. As well as any contribution based on payrolls and raised to provide such benefits in respect of the number of persons employed.
FCCIS: Yes.
CDT: Yes.

Mozambique. This should be determined in accordance with the conditions in the country, and national legislation as regards social security.

Netherlands. Otherwise employers would be less inclined to employ women. Both male and female employees should be equally obliged to pay contributions.
FNV: This provision should be part of the Convention.

New Zealand. Neither of these options should be included in any instrument as they involve undue prescription of the means of providing benefits.
NZCTU: Yes.

Nicaragua. Should apply in the case of all employees regardless of the type of employment relationship.

Niger. This question should be handled through domestic legislation after consultations among the State, employers and trade unions.

Peru. Otherwise, it would be discriminatory.

Poland. In Poland, social insurance contributions are determined at the same rate for women and men.

KPP: Yes.
OPZZ: Yes.

Portugal. CAP: Yes. This is a social cost that should be borne by everyone.
CIP: The issue of contributions should not be covered in an international text.
UGT: This provision should be included in the Convention.

Qatar. There should be a special fund for maternity insurance financed by married working women's contributions as well as by bodies determined by national legislation or the insurance scheme.

Saudi Arabia. Depending on national legislation.

Sri Lanka. The economic condition of most developing countries does not allow the establishment of a compulsory social insurance scheme.

Switzerland. VSA: Yes. This provision should be included in the Convention.

Syrian Arab Republic. Fully paid maternity leave obviates the need for this.

Togo. If the social insurance scheme renders such contributions obligatory.

United Kingdom. Yes, subject to appropriate conditions for contributing to the social security system and receiving benefits.

United States. This should be strictly left to national law and practice.
AFL-CIO: Yes. Extension of appropriate social benefits for childbirth and maternity is a collective societal responsibility; differentiating between male and female employees for purpose of social insurance taxes discourages employment of women and penalizes employees working in predominantly female jobs and industries.

Uruguay. National Chamber of Commerce and Chamber of Manufacturers: No. In principle, it should not result in an increase in contributions.

Venezuela. CTV: All employed persons of both sexes should contribute.

Zimbabwe. This should be included in the Convention.

A clear majority of replies supported this provision which replicates Article 4(7) of Convention No. 103. It has been retained as *Point 19* of the Proposed Conclusions. This Point is intended to ensure that the burden of contribution is borne without distinction of sex, regardless of whether the contribution is due under compulsory social insurance or is paid as a payroll tax, or of whether it is made by employers and workers or by the employer. One government stated that the alternative, a contribution or tax paid only in respect of women workers, could discourage the hiring of women. One government and four workers' organizations proposed that this provision be included in the Convention, whereas two governments and one employers' organization did not wish to see a provision of such detail included in any instrument. It must be recalled that since this Point also relates to the financing of benefits, it has been proposed for inclusion in the Recommendation in keeping with the rationale mentioned in the commentary to the previous question.

EMPLOYMENT PROTECTION

Qu. 21 *When a woman is applying for employment, should employers be prohibited from requiring a test for pregnancy or a certificate of such a test, except for work which under national laws or regulations is prohibited or restricted for pregnant or nursing women or which is prejudicial to the health of the woman and child?*

Total number of replies: 103.

Affirmative: 87. Algeria, Angola, Austria, Belarus, Belgium, Benin, Botswana, Brazil, Cameroon, Canada, Central African Republic, Chad, Chile, Colombia, Comoros, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Greece, Honduras, Hungary, India, Islamic Republic of Iran, Italy, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Mexico, Republic of Moldova, Morocco, Mozambique, Namibia, Netherlands, New Zealand, Nicaragua, Oman, Pakistan, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, San Marino, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela, Viet Nam.

Negative: 10. Argentina, Australia, Bahrain, Guyana, Indonesia, Jamaica, Niger, Papua New Guinea, Tajikistan, Zimbabwe.

Other: 6. Bulgaria, Congo, Japan, Ghana, Myanmar, Norway.

Angola. Pregnancy must not constitute grounds for discrimination.

Argentina. Although such a measure would be appropriate, it would discourage employers from hiring women.

CGT: A requirement for such tests is discriminatory and should carry sanctions under labour legislation.

Australia. Such a provision should prohibit discrimination on the basis of the manner in which the test is required, or how the result of the test is used, rather than hinge on the mere fact of the test being conducted. Many workplaces require potential employees to have a medical examination prior to being permanently appointed. That medical examination may include a pregnancy test to enable accurate interpretation of the test results. Where the test is taken with the employee's informed consent and done for bona fide purposes, it would be unnecessary to penalize the employer.

ACTU: Yes.

Austria. The prohibition of pregnancy testing should also be guaranteed in respect of activities which may be damaging to health. It would be desirable to strive for compulsory notification by the employer of work involving health risks.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Bahrain. The employer may require the working woman to undergo a medical examination to ensure her safety and protection during pregnancy.

Belgium. The case of fixed-term or temporary employment should, however, be considered.

Botswana. To protect women against possible discrimination in employment.

Bulgaria. Ministry of Labour and Social Policy: No; Ministry of Health: Yes.

Canada. The provisions could be widened to cover all types of discrimination on the basis of pregnancy.

CLC: Yes. No mandatory pregnancy tests under any conditions. Women should not be denied employment because of pregnancy.

Central African Republic. The prohibition should be accompanied by a sanction.

Chile. There should be no exceptions to the prohibition.

CPC: As long as legislation ensures that pregnancy does not become a burden for employers.

Colombia. These are discriminatory and unacceptable acts.

Comoros. To ensure equality of opportunity and treatment.

Congo. The requirement of such a certificate should be limited to work involving a risk to the health of the woman or child. The protected period should cover the pregnancy and up to the end of nursing.

Czech Republic. UZS ČR: No. The employer has the right to know an employee's state of health when taking her into employment.

ČMK OS: Yes. With respect to work that is harmful to the health of the woman and child, the Recommendation should state that the range of such work will be directly restricted in national legislation.

Denmark. DA: Such prohibition should not be covered by rules on maternity leave.

FTF and LO: This text should be included in the Convention.

Dominica. CSA: Yes.

DAWU: Yes.

DTU: Yes.

WAWU: Yes.

Ecuador. CONAMU: Employers should be prohibited from requiring a test for pregnancy, irrespective of the work the woman seeks to do.

El Salvador. Such a test would be prudent in the event of any serious risk to the life or health of a woman or her child.

Ethiopia. Such testing constitutes discrimination among sexes in employment.

CETU: Such testing violates the working rights of women.

Finland. Requiring a test may lead to discrimination against women. It also violates the privacy of women. It is important to ensure that potential mothers are not discriminated against in recruitment situations.

TT, LTK, Federation of Finnish Enterprises and KT: No. There are also other situations where it is acceptable to ask information about the applicant's possible pregnancy, such as jobs where it is essential that the same worker works for a longer period of time.

SAK, STTK and AKAVA: Even asking about possible pregnancy in the recruitment situation is discriminatory.

France. It would be preferable not to provide exceptions. The French Government wished to strengthen the protection of pregnant women by establishing the general principle of non-discrimination in hiring. An employer cannot seek any information concerning the pregnancy of a jobseeker. The occupational physician is the sole authority competent to determine whether a pregnant woman may perform a job.

CFDT: Yes. Exceptions should be permitted after consultation with the social partners.

CFE-CGC: Yes. Legislative measures should prohibit direct or indirect inquiry regarding the possible pregnancy of a female candidate for a job.

CFTC: Yes. Restrictions should not be discriminatory.

Germany. Risks to the health of mothers and children must be dealt with in maternity protection legislation to ensure that the exception referred to in the question is clearly defined.

DAG: Yes. Exactly which types of work are "prejudicial" must be determined in legislation.

Ghana. Employers should be prohibited from requiring such tests.

NCWD: Yes.

TUC: Such testing is discriminatory.

Guyana. It is unfair to compel the employer to employ a pregnant woman.

India. If in accordance with national laws, such a prohibition would respect the dignity of women and safeguard the principles of maternity protection as a condition for equality and non-discrimination.

Bharatiya Mazdoor Sangh: No. When woman applies for employment, the employer may require a test of pregnancy on condition that employment will not be refused on the grounds of pregnancy. In cases of labourious or hazardous work, employment can be postponed.

National Front of Indian Trade Unions: Permitting such tests is beneath the dignity of women and against the principles of maternity protection as a condition for equality and non-discrimination. However, when national laws prohibit the employment of pregnant women in some trades, they will remain operative.

Iraq. General Federation of Trade Unions: Yes.

Italy. CONFINDUSTRIA: Should be handled through collective bargaining or national legislation.

Jamaica. This would lead to employers selecting more males over females for employment.

JEF: Tests should be done only if necessary.

Japan. Consensus needs to be reached in each country about what specific actions should be prohibited at the time of recruitment or commencement of employment for reasons such as pregnancy or childbirth. Such prohibitions should be determined in accordance with the actual situations, which differ from country to country, or by the content of the employees' work. There should not be a provision in the Recommendation that applies to all countries uniformly.

JTUC-RENGO: This provision should be included in the Convention.

Jordan. Amman Chamber of Industry: No. Employers should be aware of the married woman's health.

Kenya. Such tests would amount to discrimination on account of sex.

Republic of Korea. It should be prohibited without fail.

KEF: No.

Lebanon. National laws should determine the kinds of work that are considered prejudicial to the health of the woman and child.

Malaysia. MAPA: No.

MEF: No. The employer should be free to hire any person of his choice, based on conditions as determined by the employer.

MTUC: No. Expecting mothers should not be discriminated against in hiring.

Mali. Pregnancy should not be a source of discrimination.

Morocco. This provision should be included in the Convention.

FCCIS: Depending on the sector.

Myanmar. Under national rules and regulations, a pregnant worker may not be hired for a job requiring heavy physical effort. When no heavy physical effort is required, a pregnant woman who is within four months of confinement may be selected for the post, but cannot start until six weeks after childbirth.

Namibia. NEF: Yes. Such testing would violate the United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and Convention No. 111 concerning discrimination in respect of employment and occupation.

New Zealand. Asking questions about pregnancy, birth control or family planning at job interviews may indicate an intention to discriminate. It would be useful to note whether any other laws or regulations may lead to unintentional discrimination.

NZEF: A safe and healthy workplace must be maintained for all employees.

Niger. Since pregnancy is temporary, it should in no case constitute an obstacle to the candidacy of a woman for a job.

Norway. National law does not entitle the employer to require a prospective employee to take a pregnancy test prior to appointment. Norwegian case law has, however, provided that pregnancy can be given weight in the context of temporary appointments.

Peru. National legislation provides that offers of employment and access to training opportunities cannot contain requirements that constitute discrimination, annulment or alteration of equality of opportunity or treatment.

Philippines. Requiring a test for pregnancy or a certificate of such a test for female job applicants is a discriminatory act against women.

Poland. KPP: No.

Portugal. Requiring a pregnancy test or a certificate thereof is not the only way to avoid risks in such situations. It can lead to discrimination against pregnant women in their access to employment. Such a possibility will only be acceptable if the employment contemplated is temporary.

CIP: No. Excessive protection could have adverse effects.

Romania. The establishment of general national criteria pertaining to access to employment should respect equality of opportunity between men and women. At the same time, it should not hinder the right of employers to ensure the enterprise's productivity.

National Council of Private Small and Medium-sized Enterprises: Yes. Such a requirement on the part of an employer would be discriminatory.

Slovakia. To secure equality of opportunity for women.

South Africa. BSA: It would not be fair to impose the financial burden and inconvenience upon an employer of a new staff member taking maternity leave.

Spain. Such practices would be prohibited on the principle of non-discrimination in employment.

Suriname. FAL: No.

Sweden. An employer should be forbidden to require a pregnancy test at the time of hiring. However, the employer should, if hiring a pregnant woman, inform her about work which can entail a pregnancy hazard (to the mother or the embryo).

Switzerland. Such practices would constitute discrimination in hiring.

Syrian Arab Republic. A woman should not be deprived of her right to work or the possibility of choosing the appropriate type of work due to pregnancy or nursing.

Togo. To avoid discrimination.

Trinidad and Tobago. NATUC: No. This would inhibit the employer in the process of planning for the business.

Turkey. TISK: No.

United Kingdom. Such practices would amount to sex discrimination under national legislation.

United States. Under federal law, an employer is not *per se* prohibited from asking questions of applicants about pregnancy, but an employer may not discriminate against applicants for employment on the basis of pregnancy or pregnancy-related medical conditions. Pre-employment inquiries or tests which treat pregnancy-related conditions in the same manner as other temporary medical conditions are legally permissible, as long as they relate to an applicant's ability to perform a job. An employee's pregnancy can only be a consideration regarding employment decisions when the employer can show that non-pregnancy is a "bona fide occupational qualification" that is reasonably necessary to the normal operation of that particular business or enterprise. This business defence is legally limited only to situations where "sex or pregnancy actually interferes with the employee's ability to perform the job".
USCIB: Yes, but with no exceptions.

Uruguay. National Chamber of Commerce and Chamber of Manufacturers: No.

Zimbabwe. ZCTU: Yes.

The vast majority of replies from the tripartite constituents supported this provision which corresponds to *Point 21* of the Proposed Conclusions. There is no similar provision in Convention No. 103 or Recommendation No. 95. This issue was raised in the questionnaire because of concerns expressed in some member States and in the Committee of Experts reporting on the Application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

Many of the replies saw the requirement of a pregnancy test as discriminatory, and one reply questioned whether such a test did not violate a woman's right to privacy. Most replies noted that the prohibition would not apply, when the work has been restricted under national law for pregnant and nursing women because the duties are deemed prejudicial to the health of the woman and child. A few replies voiced the opinion that an employer should be prohibited from requiring a pregnancy test under any condition. Instead, it was suggested that the employer be required to notify workers and job applicants of the health risks that could be posed by the job duties, especially with respect to pregnancy and nursing, and to ensure a healthy workplace for workers of both sexes. Several replies suggested including this Point in the Convention.

Some replies suggested adding other prohibitions, such as asking questions about pregnancy, birth control, or family planning at interviews. However, the Office did not feel that there was sufficient consensus to add these. Considering the interest expressed in the replies to Question 12(2) and in order to address the need for specific measures to prevent discrimination, a new phrase, "to ensure that maternity does not constitute a source of discrimination in employment, measures adopted should include" has been added to the beginning of *Point 21*. The formulation in *Point 21* leaves open the possibility of including other measures to eliminate discrimination in employment.

Should a woman be entitled to return to her former position or a similar one at the end of her maternity leave? **Qu. 22(1)**

Total number of replies: 104.

Affirmative: 102. Algeria, Angola, Argentina, Australia, Austria, Bahrain, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Greece, Guyana, Honduras, Hungary, India, Indonesia, Islamic Republic of Iran, Italy, Jamaica, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Mexico, Republic of Moldova, Morocco, Mozambique, Myanmar, Namibia, Netherlands, New Zealand, Nicaragua, Niger, Oman, Pakistan, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, San Marino, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Viet Nam, Zimbabwe.

Other: 2. Japan, Norway.

Argentina. CGT: And her wages should be maintained.

Australia. A return to the same position whenever possible.

Austria. There is little point to such a provision if the employment protection in Question 12 is granted for a certain period beyond the end of maternity leave.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes. To her former position.

Bahrain. Confinement and maternity leave should not affect the nature of a woman's work, her contract or its conditions, except where necessary and on the basis of a medical certificate.

Belgium. Maternity should not serve as a basis for changing the essential conditions of the employment contract.

Brazil. CNC and CNI: No.

Canada. In Canada, an employee is usually also entitled to the same wages and benefits accrued prior to the leave.
CEC: Yes. However, within the context of the enterprise. What is most important is that there should be fair treatment.
CLC: Yes. With no loss of benefits or seniority.

Central African Republic. The employer's refusal would be equivalent to a substantial modification of the employment contract.

Chile. The woman worker should suffer no setback on account of maternity.
CPC: If she meets the physical and mental requirements that formed the basis of her contract and if the position exists.

China. This is the basic content of employment protection and concrete measures that reflect equal rights for women in employment.

Comoros. If her health condition permits, otherwise to a similar post.

Congo. To her former position.

Cuba. To her former position.

Cyprus. This should be transferred to the Convention.

Czech Republic. UZS ČR: Yes.

Denmark. The job should be considered as being of similar quality to the one she left before the maternity leave.
FTF: This provision should be transferred to the Convention.
LO: This provision should be transferred to the Convention.

Dominica. CSA: Yes.
DAWU: Yes.
DTU: Yes.
WAWU: Yes.

Ecuador. To her former position.
CONAMU: Yes. Without any change to her remuneration.
UGTE: Yes. As long as the activity is not prejudicial to the mother or child.

El Salvador. Provided her relationship with the newborn child is not compromised.

Ethiopia. CETU: Yes. Unless it is dangerous to her health.

Finland. TT, LTK and Federation of Finnish Enterprises: As far as it is possible.

France. CFE-CGC: Yes. Reservations regarding the return to a similar position.

Germany. Ensuring the possibility of a return to at least an equivalent post is part of the prohibition of discrimination.

Honduras. Otherwise, this would constitute a change in her conditions of work.

Hungary. The woman's job shall only be altered with her consent by modification of the work contract by mutual consent.

India. AITUC: Yes. This is an essential element of maternity protection.
Bharatiya Mazdoor Sangh: Yes. During pregnancy, alternative work is given to woman to protect her health. At the end of maternity leave, she should be entitled to her former position.
National Front of Indian Trade Unions: Without affecting rank and wages.

Indonesia. As mentioned in Recommendation No. 95, Paragraph 4(3).

Islamic Republic of Iran. Unless it is harmful to her health.

Iraq. General Federation of Trade Unions: Yes.

Italy. CONFINDUSTRIA: Should be handled through collective bargaining or national legislation.

Jamaica. JEF: Yes, but this provision should be limited to two pregnancies.

Japan. This question should be determined by each Member.
NIKKEIREN: No. The former job may disappear or be greatly transformed due to rapid technological innovation. It is difficult to decide what is similar to the former job.
JTUC-RENGO: Yes.

Lebanon. A woman's absence on maternity leave does not render that position vacant. However, when leave is extended to an extent prejudicial to the proper functioning of the work, the enterprise should be allowed to find her a similar position.

Lithuania. Confederation of Lithuanian Entrepreneurs/Employers: Yes. Otherwise the State must compensate for the loss.

Luxembourg. The right to re-employment should be included in the Convention.

Mali. Unless contrary to medical advice.

Mauritius. The interruption is temporary, similar to annual or sick leave, and should be treated as such.

Morocco. CDT: According to the possibilities of the enterprise.

Mozambique. Unless there are clinical reasons to the contrary. There should be no change in the wage paid.
OTM: Except when it is impossible due to a physical condition resulting from the confinement.

Myanmar. To ensure employment rights regarding promotion, pension, bonus and gratuity.

New Zealand. In the event that a Recommendation is adopted, the Convention should support the policy of providing protection for staff on parental leave, including the right to return to work. Member States should specify how this provision is implemented under national laws and regulations. Member States should be free to specify exceptions where a general presumption exists on the right to return to a former position, or a similar one. Such exceptions might include a redundancy situation, dismissal for cause unrelated to pregnancy or leave, refusal by the employee of the job that is offered, or when the employee takes leave to which she is not entitled. Any instrument should be capable of sustaining the rights of member States to indicate the situations where dismissal can occur.

Nicaragua. In the same post and in identical conditions.

Norway. Under national law, she returns to work in her former position after maternity leave.

Peru. CUT: Without reduction in earnings.

Philippines. Maternity protection includes not only the right to maternity leave and the right to benefits, but also the right to job security during the prescribed periods.

Poland. Polish labour law provisions meet these requirements.
KPP: If possible.

Portugal. To return to work in the same position or in a similar one is an essential prerequisite of the entitlement to maternity leave. It necessarily results from the Convention.

CIP: No.

UGT: This provision should be included in the Convention. The same remuneration should be maintained.

South Africa. BSA: Yes. Unless she has taken additional leave, in which case it should be left to collective bargaining or whatever is practical. SMEs require special attention.

Spain. This provision could be included in the Convention under employment protection.

CCOO: Yes. Her former position.

Sri Lanka. This is required to provide for employment security.

Switzerland. The term should be "equivalent" post rather than a "similar" one.

Syrian Arab Republic. The Convention must clearly stipulate that the position is to be retained till the end of maternity leave.

Togo. Unless the doctor recommends otherwise.

Trinidad and Tobago. NATUC: Yes. Otherwise, a woman would be penalized as a result of pregnancy.

Turkey. TISK: No. An approach inconsistent with employment conditions, which restricts the employer's actions regarding the permanence of the employment contract, would be unrealistic.

United Kingdom. Women would be deterred from taking their entitlement to maternity leave if there was the possibility that they could lose their job, status or pay.

United States. AFL-CIO: Without this assurance, the leave guarantee will be meaningless. The only reason for termination or demotion while on maternity leave should be a business necessity.

Uruguay. National Chamber of Commerce and Chamber of Manufacturers: Yes. As long as the same level of working capabilities is maintained.

Venezuela. CTV: To her former position.

Zimbabwe. Should even be promoted as per entitlement.

The right envisioned by this question, a woman's entitlement to her former position or a similar one at the end of maternity leave, obtained overwhelming support from the tripartite constituents. This right was included in Paragraph 4(3) of Recommendation No. 95. Several replies emphasized that this is an essential element of maternity protection. The wording proposed has therefore been included in *Point 20* of the Proposed Conclusions.

A number of replies asserted that a woman should be entitled to return to her former position, since maternity should not serve as a basis for changing the essential conditions of employment. Others affirmed that temporary absence on maternity leave should be treated similarly to other temporary absences such as annual or sick leave. Many replies, however, recognized that there might be circumstances in which it would not be possible for a woman to return to her former position, for example, when the job would pose a danger to the woman's health or when the length of her absence was extended so that it was prejudicial to the completion of the work. *Point 20* takes account of such situations providing that a woman would be entitled to her former position or a similar one. Two governments proposed the word "equivalent" as an alternative to the word "similar".

Should the period during which the woman is on maternity leave be considered as period of service for the determination of her rights? **Qu. 22(2)**

Total number of replies: 104.

Affirmative: 98. Algeria, Angola, Argentina, Austria, Bahrain, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Greece, Guyana, Honduras, Hungary, India, Indonesia, Islamic Republic of Iran, Italy, Jamaica, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Mexico, Republic of Moldova, Morocco, Mozambique, Namibia, Netherlands, Nicaragua, Oman, Pakistan, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, San Marino, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Other: 6. Australia, Denmark, Japan, Myanmar, New Zealand, Norway.

Australia. The rights referred to must be defined. Australia would support the provision if rights represent continuity of service but not the accrual of entitlements.
ACTU: Yes.

Austria. BAK: Yes. Interruption of work is one of the most important reasons for discrimination against women in matters of promotion and remuneration.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Bahrain. Maternity leave is an integral part of her period of service.

Belgium. Maternity leave in the strict sense of the term.

Brazil. CNC and CNI: No.

Canada. CEC: Yes. When possible.

Central African Republic. Otherwise it would be discriminatory.

Chile. For all legal purposes, this time must be considered as a period of full service.

China. Childbirth should be regarded as social labour. Maternity leave does not mean the termination of employment, but a process of recovery and preparation for work.

Colombia. Should be considered as a period of service for all purposes associated with legislation governing benefits.

Comoros. In conformity with national legislation.

Cyprus. This important stipulation should be transferred to the Convention.

Denmark. The woman should maintain her accrued rights.
DA: This should not be included in the instrument.

Dominica. CSA: Yes.

DAWU: Yes.
DTU: Yes.
WAWU: Yes.

Ecuador. The woman worker must maintain the same entitlements to which she was entitled prior to pregnancy.
UGTE: Yes. All rights should be retained.

Ethiopia. Since maternity leave is legally paid leave, it is considered as a period of service.

Finland. With possible exceptions due to national conditions.
TT, LTK, Federation of Finnish Enterprises and KT: No. According to many collective agreements, certain rights and benefits are based on the amount of experience the worker has, which is only obtained by working. Maternity leave cannot always be considered as period of service.

France. French legislation only considers maternity leave as a period of service for the determination of seniority rights and of paid leave.
CNPF: No.
CFDT: Yes. With regard to seniority and pension rights.
CFTC: Yes. Otherwise, there would be discrimination between men and women.
CGT-FO: Yes. Notably for old-age pension rights.

Ghana. Otherwise a woman would be deprived of benefits.
TUC: Yes. Otherwise it would be discriminatory.

Honduras. COHEP: This would constitute discrimination with regard to entitlements.

Indonesia. APINDO: No.

Iraq. General Federation of Trade Unions: Yes.

Italy. CONFINDUSTRIA: Should be handled through collective bargaining or national legislation.

Jamaica. JEF: Yes. But limited to two pregnancies.

Japan. Yes with regard to rights relating to minimum working conditions. However, for the determination of other rights, the matter should be determined by each Member in accordance with the nature of each right and that country's situation.
NIKKEIREN: No.
JTUC-RENGO: Yes.

Jordan. General Federation of Jordanian Trade Unions: No.

Malaysia. MTUC: Yes. Maternity leave is paid leave. The period of service is continuous.

Mauritius. MEF: No. If less than 12 months' continuous service.

Myanmar. Maternity leave is considered as a period of service.

Netherlands. FNV: Article 11(2)(b) of the CEDAW reads: "To introduce maternity leave with pay or with comparable social benefits without the loss of former employment, seniority or social allowances".

New Zealand. Any instrument adopted should, at a minimum, provide for service to be deemed unbroken when any person takes parental leave. Whether the period of parental leave should count as service should be addressed under national laws and practices. Not allowing the service entitlement of an employee to accumulate while on parental leave may create a disincentive to take such leave, and lead to inequalities in the wages and conditions of employment of those employees who take parental leave.
NZCTU: Yes.

Nicaragua. With regard to rights relating to length of service, leave and thirteenth month.

Norway. Absence due to maternity leave should not be taken into account when considering continuity of employment.

Philippines. When a woman is on maternity leave, she is still a bona fide employee and should be entitled to the full rights and privileges accorded to such.

Portugal. CIP: No.

UGT: The period of absence should be considered as a period of effective employment for all purposes.

South Africa. Maternity leave is temporary and does not differ from other types of permitted leave of absence.

BSA: Provided the period is limited to the stipulated 12 weeks. For additional periods of leave, it should be left to individual collective bargaining.

Suriname. FAL: No.

Sweden. Parental leave should be equated with length of service in the computation of social benefits, pension rates, redundancy status, etc.

Syrian Arab Republic. Without prejudicing her rights.

Togo. Rights including seniority and promotion.

Turkey. TISK: No. The period during which a woman is on maternity leave may be considered as a period of service for the determination of her rights, but the varying practices of the member States regarding leave should be borne in mind in this context. Relating the periods of leave, which can be up to six months depending on national legislation, to all of the other rights of workers could lead to a situation where the long rest periods in question become a burden for the undertaking.

United Kingdom. For the minimum maternity leave period set down in the Convention, a woman should not lose her rights. However, where there is further absence, the rules should be considered separately, otherwise it could deter employers from offering more favourable contractual maternity rights.

United States. AFL-CIO: Rights, such as vacation time, seniority and pensions, should continue to be accrued while a woman is on maternity leave. At a minimum, accrual of rights and benefits during periods of maternity leave should be treated no differently than accrual of rights and benefits during periods of sickness, disability or work-related injury.

An overwhelming majority of governments as well as employers' and workers' organizations were in favour of considering the period during which a woman is on maternity leave as a period of service for the determination of her rights. This provision goes further than Paragraph 4(3) of Recommendation No. 95 which provides that a woman's seniority rights should be preserved during maternity leave.

Several replies questioned whether the period of maternity leave would be considered as part of woman's period of service for the determination of all her rights, given that, under some national systems, not all rights that accrue with time in service accrue during a woman's maternity leave. Other replies asserted that the leave period should be considered as a period of service for all purposes. Some of the rights mentioned were seniority, social benefits, pension rights, vacation, promotion, and redundancy status. One workers' organization emphasized that absence during maternity leave should not be treated less favourably than absence due to sickness, temporary disability, or work-related injury.

Point 20 of the Proposed Conclusions has been drafted in view of the support received. The wording "be considered as a period of service for the determination of her rights" is intended to support the principle that a woman should not be penalized for the time she must take for maternity leave.

While the Office acknowledges the variety of rights which are provided for under national systems, there was insufficient support in the replies to limit *Point 20* in the manner suggested.

HEALTH PROTECTION

Qu. 23 *Should the employment of a woman on work prejudicial to her health or that of her child, as defined by the competent authority, be prohibited during pregnancy and up to three months after childbirth and longer if the woman is nursing her child?*

Total number of replies: 102.

Affirmative: 87. Algeria, Argentina, Australia, Austria, Bahrain, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Germany, Ghana, Guyana, Honduras, Hungary, India, Islamic Republic of Iran, Italy, Jamaica, Japan, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Republic of Moldova, Morocco, Mozambique, Nicaragua, Niger, Oman, Pakistan, Peru, Philippines, Portugal, Qatar, Romania, Russian Federation, San Marino, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Negative: 4. Namibia, Netherlands, Papua New Guinea, United States.

Other: 11. Congo, Finland, France, Greece, Lebanon, Mexico, Myanmar, New Zealand, Norway, Saudi Arabia, United Kingdom.

Argentina. CGT: Such a prohibition should not be subject to any exceptions.

Australia. Prohibitions must be exercised with caution, given their potential for discrimination. Flexibility should be maintained for consideration on a case-by-case basis. If necessary, an external, competent authority should determine work which is inappropriate. Employers and employees should follow guidelines developed by the competent authority detailing dangerous occupations and the effects they may have on a pregnant woman or child.

ACTU: The employer should not have the discretion to determine whether or not the work is prejudicial to the woman's health. This should be independently determined by an objective authority.

Austria. A paragraph regarding health protection should be included in the Convention. Furthermore, a ban on night work and overtime should be clearly spelled out in the Recommendation (as in Article 5(1) of Recommendation No. 95).

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Belgium. The Recommendation should make clear that the woman concerned cannot be removed from employment.

CNT: The instrument(s) should leave the regulation of these questions to member States to handle on the basis of their national culture. The European Directive has adopted an approach to safety and health for workers during pregnancy and nursing based on risk analysis and the proposal of alternatives in the event of recognized risks.

Brazil. Individual medical appraisal must be taken into account. Medical literature recommends that pregnant and nursing women be removed from risks to the normal development of the pregnancy, risks to the foetus and risks related to nursing. This safeguards the rights of the child.

CNC and CNI: No. Such prohibitions must be based on a medical certificate.

CNF: By law.

Cameroon. Yes, for the protection of the child.

Canada. Prohibiting access to certain occupations during pregnancy is only workable in very dangerous occupations. There may be other occupations which, because of circumstances, pose as much risk to the woman or her child. A better approach could be to provide modification of job duties, reassignment to another job or, as a last resort, a leave of absence in situations where employment may pose a risk.

CLC: Work should be modified or the woman reassigned. If this is not possible, paid leave should be made available.

Central African Republic. The duration should be determined by a doctor.

Chile. Enterprises where hazards may be encountered must be obliged to inform their women workers of the risks involved.

China. The prohibition should last up to one year after childbirth.

Colombia. Legislation should specify posts deemed to be risky and should be periodically updated.

Congo. See Question 21.

Cyprus. To be transferred to the Convention.

Denmark. DA: Such provisions should not be included in such an instrument.

Dominica. DAWU: Yes.

DTU: Yes.

WAWU: Yes.

Ecuador. The problem of women who need to work must be considered.

CONAMU: The pregnant woman's right to employment should be protected by the international Convention, which should prevail over national legislation.

Egypt. This prohibition is not related only to the maternity period.

Federation of Egyptian Industries: Yes. In accordance with the categories of work defined under Egyptian law where the employment of women is prohibited because of the prejudicial nature of the work to women.

Egyptian Trade Union Federation: Yes. The prohibition of such prejudicial work should not be confined only to the period of pregnancy, childbirth or nursing.

Ethiopia. The period defined as "after childbirth and longer" is ambiguous.

Finland. Such work should be prohibited, if no other work can be arranged for the worker that is not prejudicial to the development of the foetus or to the pregnancy or to the health of the mother and the child after the birth. The length of a possible prohibition should be based on the nature of employment and the medical condition of the worker. The mere fact that a woman is nursing her child may be problematic, if no time limit is set.

France. See Question 24.
CFDT: Yes.
CFE-CGC: Yes.
CFTC: Yes.
CGT-FO: Yes.

Germany. For non-nursing mothers, prohibition of employment following the end of the maternity protection period is not necessary in all cases, but may be necessary, depending on the mother's ability to work, as stated in a doctor's certificate, during the months immediately after the birth.
DAG: See Question 21.

Ghana. Work that is injurious to the health of a pregnant woman or that of her child should be discontinued.

Greece. Determining the types of work which should be prohibited is neither easy nor, perhaps, just. It would be better to draw up a non-exhaustive list of agents and working conditions recognized by the competent authority as dangerous. The employer would be obliged to keep a written report on the exposure of women workers to these agents. The report would be established by specialists in occupational safety and health (safety technicians and doctors).

Honduras. This should be prohibited both in the Convention and in domestic legislation.

India. AITUC: Yes. The provisions of Recommendation No. 95 should be further elaborated and fortified.
National Front of Indian Trade Unions: It should be decided by national law.

Indonesia. APINDO: Yes.

Iraq. General Federation of Trade Unions: Yes.

Jamaica. JEF: No.

Japan. The phrase "prejudicial to her health or that of her child" should be replaced by "prejudicial to pregnancy, childbirth, nursing, etc.".
NIKKEIREN: The nursing period must be clarified.

Lebanon. The duration of such prohibition should be determined by the competent authority.

Luxembourg. The prohibition of dangerous work should be included in the Convention.

Malaysia. MAPA: No.
MEF: Yes. During the period of prohibition from work the employee should not be entitled to any wages from the employer.

Mali. Not merely prohibited, but strongly sanctioned.

Mauritius. The Recommendation may list working conditions considered prejudicial to her health and that of her child.

Mexico. The Recommendation should contain a provision which states that "national legislation or the competent authority should determine which tasks or work are prejudicial to the health of a woman or her child, both during pregnancy and when nursing". The prohibition should not be subject to a fixed period of time, but rather to the tasks to be performed by the pregnant woman. Provisions relating to safety and health in the workplace should be included in the Convention, rather than the Recommendation.

Myanmar. Should be considered for special cases. Our service rules and regulations provide protection from work requiring heavy physical effort; during pregnancy and for six weeks after childbirth.

Namibia. Should be covered under occupational health and safety.
NEF: Yes.

Netherlands. With the exception of specific prohibitory provisions which apply to all employees, the following formulation is preferred: "A pregnant employee cannot be obliged to ...". This formulation was chosen with a view to ensuring that the position of women within the labour market is as equal as possible to that of men.

FNV: A paragraph should be added to the Recommendation regarding the need to take measures for compulsory risk assessment and risk evaluation by the employer.

New Zealand. A woman should not engage in work that is prejudicial to her health, or the health of her children, for such a period during the pregnancy and after childbirth as is considered necessary. Temporary transfer or leave may be provided due to health concerns related to the position.

NZEF: National legislation requires employers to maintain a safe and healthy working environment. It would not be lawful for any employer knowingly to employ a pregnant woman in any situation which would be dangerous to herself or her child. No employee, male or female, should be exposed to any hazard. Employers are required to identify actual or potential hazards and, where hazard elimination or minimization is not possible, appropriate safety precautions must at all times be taken.

NZCTU: Consideration may need to be taken of work prior to pregnancy that may be prejudicial to the health or ability of a woman to get pregnant.

Norway. National regulations require the employer to make an assessment of whether factors in the working environment may involve a risk of reproductive damage. Pregnant and nursing women may under no circumstances be assigned to work involving such a risk. Violations are punishable.

Papua New Guinea. With the certification of a competent medical practitioner.

Peru. CUT: As long as the woman can carry out other activities, as foreseen in Question 24. Otherwise, such a provision could be discriminatory.

Philippines. Greater attention to safety and health could include transfer to less tiring work.

Poland. KPP: Yes.
OPZZ: Yes.

Portugal. Protection for mother and child on work prejudicial to health is a fundamental obligation and must be derived from the Convention.

UGT: Such a provision should be included in the revised Convention.

Saudi Arabia. As defined by the competent authority.

Slovakia. During pregnancy and until the end of the ninth month after childbirth.

South Africa. BSA: Morally, it is difficult to say no. However, where the woman is in a key position and in SMEs, the employer might not be in a position to accommodate this. The question then arises who should pay and be inconvenienced. The employer and co-workers should not be expected to carry the burden.

Spain. We do not understand the reference to three months. If the work is prejudicial to the health of the woman or to that of her child, it should simply not be performed.

CIG: Yes. But without any negative repercussions on the woman's labour rights and economic entitlements.

CCOO: Yes. A change of position should be arranged.

Sweden. When direct prohibitions derive from work environment hazards which cannot be eliminated and where there is no possibility of transfer to other duties.

Tunisia. The maximum duration of the prohibition should be determined by national legislation.

Turkey. A time limitation may not be appropriate.

TISK: No. The Convention provides that maternity leave may be extended where necessary and that additional leave may be granted. Consequently, the inclusion of such a provision in the Recommendation would introduce a different obligation on a subject which has been regulated. According to the Convention, the woman could refrain from working to the extent required by her state of health. In other words, on presentation of a medical certificate, her rest period could be prolonged if her work would be detrimental to her health or to that of her child.

United Kingdom. In general, a prohibition is unnecessary where steps are taken to remove her from any identified risk to her health or that of her child. A balance needs to be made between protecting the health of women and protecting their opportunities to compete on equal terms in the labour market.

United States. Unless health and/or safety concerns for a woman or a foetus actually interferes with the employee's ability to safely perform those aspects of the job that fall within the "essence" of the particular business. Federal courts have held that women are to be given the right to make the same choices accorded to men as to whether they wish to risk their reproductive health for a particular job. Male and female workers who are planning a pregnancy and women who are pregnant can be informed about hazards and advised against specific work, but cannot be excluded from work.

USCIB: This would be inconsistent with American law and practice, which seeks to treat all qualified individuals equally. Neither the employer nor the State may determine what is injurious to a pregnant woman's health or that of the foetus. The choice to work or not to work is the woman's and not the State's.

AFL-CIO: Employers have an obligation to provide a safe and healthy workplace for all workers. There should be no special restrictions or prohibitions based on pregnancy or health and safety of mother and/or child except in instances where the working conditions pose a unique and serious danger for the mother and/or child. Where such special circumstance exist, or where the workplace poses risk for all workers, the employer must take all reasonable steps to make the workplace safe and, failing that, must provide an accommodation that enables the employee to continue working at full pay and benefits.

Uruguay. National Chamber of Commerce and Chamber of Manufacturers: Yes. In case a suitable job does not exist, other mechanisms of social security should be put in place to protect her.

Venezuela. CTV: The employer should be obliged to transfer the woman to a different post where there are no such health hazards.

Viet Nam. A lighter job should be provided.

This proposed provision, which recalls Paragraph 5(2) of Recommendation No. 95, was strongly supported by governments, employers' and workers' organizations. It is retained as *Point 22(1)* of the Proposed Conclusions.

Two different approaches to the question of health protection for pregnant and nursing women were revealed in the comments to this question. First, in many countries, identification by the competent authority of certain types of work as being prejudicial to a woman's health or that of her child results in general prohibitions. In others, an analysis is made of workplace risks and of a particular woman's capacity to perform her job safely. An approach based on risk analysis, modification of duties, and temporary transfer was seen by a number of respondents as preferable to outright prohibition. One government suggested that flexibility was needed to provide solutions on a case-by-case basis, particularly when supported by a medical certificate.

Several replies cautioned that care must be exercised to ensure that prohibitions do not result in discrimination. A similar number pointed out that all employees had the right to work in safe and healthy conditions and that reproductive hazards affected men as well as women. One government stressed the need to balance health protection with equality of opportunity. Several respondents noted the importance of ensuring job security, employment rights and pay during any period of prohibition.

A number of proposals were made as to who should exercise responsibility for determining when a pregnant or nursing woman should be prohibited from certain work — for example, an independent competent authority, a medical doctor, the employer, or collective agreements — and whether prohibitions should be limited to very dangerous occupations or to certain degrees of exposure. As formulated in *Point 22(1)*, these determinations would be made at the national level.

Qu. 24

Where the woman's work is the subject of a prohibition of employment during pregnancy and nursing or involves a risk to her health or that of the child, should measures be taken to provide, on the basis of a medical certificate, as appropriate, an alternative to such work in the form of:

(a) an adaptation of conditions of work;

(b) a transfer to another post, when such an adaptation is not feasible; or

(c) leave, in accordance with national laws, regulations or practice, when such a transfer is not feasible?

Total number of replies: 103.

Affirmative: 81. Algeria, Argentina, Australia, Austria, Bahrain, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Costa Rica, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, Germany, Ghana, Guyana, Honduras, Hungary, India, Islamic Republic of Iran, Italy, Jamaica, Japan, Jordan, Kenya, Republic of Korea, Kuwait, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Republic of Moldova, Netherlands, New Zealand, Nicaragua, Niger, Oman, Pakistan, Papua New Guinea, Peru, Philippines, Poland, Portugal, Romania, San Marino, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, Sri Lanka, Suriname, Switzerland, Thailand, Togo, Trinidad and Tobago, Tunisia, Ukraine, United Arab Emirates, United States, Uruguay, Venezuela, Zimbabwe.

Negative: 1. Namibia.

Other: 21. Congo, Croatia, Cuba, France, Greece, Indonesia, Latvia, Lebanon, Mexico, Morocco, Mozambique, Norway, Qatar, Russian Federation, Spain, Sweden, Syrian Arab Republic, Tajikistan, Turkey, United Kingdom, Viet Nam.

Algeria. Resort to option (c) if the employer is unable to ensure measures (a) or (b).

Argentina. Additional provisions should guarantee the woman's right to return to her previous work at the same rate of pay.

CGT: Yes. The instrument should also guarantee continued payment of her wages.

Australia. Members should have the flexibility of all three options to facilitate the cautious application of prohibitions against work presenting health risks.

ACTU: In the case of leave, this should involve payment of lost wages separate from any paid maternity leave entitlement.

Austria. In none of the three cases should any reduction in remuneration be permitted. Transfer to another job should only occur within the framework of the existing employment contract and where the woman worker can reasonably be expected to occupy the position. Finally, the term "leave" in (c) should be replaced by "release".

BAK: Yes. Transfer should be allowed only if the new post is equivalent in status to the old one.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Bahrain. This proposal should be applied in very limited cases, according to predetermined conditions, to avoid negative effects to the employer as a result of transfers, adaptation of conditions of work or leave.

Brazil. See Question 23.

CNC and CNI: Only (b).

Canada. Yes to (a), (b) and (c), but not only where a prohibition exists. For example, the Canada Labour Code provides modification of job duties, reassignment to another job or, as a last resort, a leave of absence, upon presentation of a medical certificate attesting to the fact that the job, or a medical condition, may pose a risk.

Chile. CPC: Only (a) and (b).

China. May be arranged as progressive provisions.

Colombia. Option (c) could present legal problems in some countries, including Colombia.

Congo. Depending on her condition, option (b) or (c).

Costa Rica. The particular option chosen will depend on the country's social security system.

Croatia. All social partners agree that an alternative to such work should be provided in the form of (b) or (c). The requirement under (a) is difficult, and in many cases, impossible to fulfil.

Cuba. If, as a consequence of her pregnancy, she cannot perform her usual duties, she should be provisionally transferred, on the basis of medical advice, to another position suitable for her physical condition.

Cyprus. To be transferred to the Convention.

Czech Republic. Yes to (a) and (b). Concerning (c): unpaid leave.

UZS ČR: Yes to (a), (b) and (c), with the provision that giving leave, when it is impossible to transfer to other work, should be absolutely exceptional and should be determined by national legislation.

Dominica. CSA: Yes.

DAWU: Yes. Preferably (a) in the first instance.

DTU: Yes.

WAWU: Yes.

Ecuador. CONAMU: These measures would be appropriate, as long as they do not affect the woman's labour rights as far as type of work, remuneration and security are concerned. The Convention should protect women workers in employment relationships, entitling a woman to perform other work in the event that the work to which the employer has assigned her is prejudicial to her health or to that of her child. The Convention should establish the obligation for the employer to offer the woman work of a similar nature, that is similarly paid and that is not prejudicial to her health or to that of her child.

UGTE: Yes. Care should be taken to safeguard job security.

Egypt. Preferably it would be done through collective negotiation, so as to reach the best and most suitable of the three options.

Federation of Egyptian Industries: Yes. Provided that the appropriate form of these measures be decided on an agreed basis between the employers' organizations and the trade union in the enterprise.

France. National public service regulations do not prohibit pregnant women from having access to jobs which are prejudicial to health. They provide instead for a temporary adaptation of conditions of work or in the exercise of professional duties, upon the advise of the physician responsible for preventive medicine. The woman retains the level of pay and other advantages linked to her initial duties.

CNPF: Yes to (a) and (b) only.

CFDT: Yes. (a) and (b) should be examined before (c).

CFE-CGC: Yes.

CFTC: Yes.

CGT-FO: Yes.

Germany. This scale of options is specified in Article 5 of European Union Directive 92/85/EEC.

DGB: If (a) and (b) are not possible, the alternative should be leave with continued payment of benefits by the employer.

Ghana. NCWD: Yes. On condition that the woman is permitted to return to her original work when risks are no longer pertinent. A doctor's recommendation and the woman's consent must be sought.

Greece. See Question 23. If the worker's case is mentioned in the report on exposure to safety and health hazards in the enterprise, then measures (a), (b) and (c) should be applied. A medical certificate would not then be necessary. In any case, it is not possible for a doctor to know the nature, length and degree of the woman's exposure to dangerous conditions or other elements needed to reach a decision. With regard to leave, the manner in which the worker is covered by her employer must be determined. We have reservations regarding cash benefits provided through social insurance.

India. HMS: Yes to (b) and (c).

Indonesia. The instrument should contain a provision permitting (a) and (b), as in Recommendation No. 95, Paragraph 5(5).

Iraq. General Federation of Trade Unions: Yes.

Italy. It is necessary to provide for the verification of conditions of work and/or environmental conditions by the supervisory bodies which may order the transfer of a woman worker to other tasks. A worker, who as a result of such transfer is assigned tasks inferior to those she normally carries out, should retain the remuneration corresponding to the tasks previously carried out.

Jamaica. JEF: Lay-off without pay should also be an option.

Japan. "Where the women's work is the subject of a prohibition of employment during pregnancy and nursing" should be replaced by "Where the work of the woman who is in the period of pregnancy or nursing is the subject of a prohibition of employment during that period". Furthermore, "or involves a risk to her health or that of the child" should be replaced by "or is prejudicial to pregnancy, childbirth, nursing, etc.".

NIKKEIREN: However, adaptive measures should not be stipulated in a uniform manner, as actual circumstances differ from country to country and from establishment to establishment. "Where the woman's work is the subject of a prohibition of employment during pregnancy and nursing" should be replaced by "where the work of a pregnant or nursing woman is the subject of a prohibition of employment during such period", and "involves a risk to her health or that of the child" by "prejudicial to pregnancy, confinement and nursing". A flexible provision should be formulated to permit, for example, changing the place of work, reducing the woman's work, reducing her working hours, etc. When reducing working hours, regulations must allow reducing wages accordingly. Regarding a right of transfer in individual cases on the basis of a medical certificate, the question is whether the content and scope of maternity protection should embrace the health of the mother and the child after birth.

Jordan. Provided that the leave in (c) is unpaid.

Amman Chamber of Industry: Yes. This depends on the administration's opinion and on the nature of the work.

Latvia. Yes to (a) and (b).

Lebanon. Such alternatives should be determined by the institution itself in accordance with its circumstances. Alternative (b) seems reasonable should there be a vacant post to transfer the woman to. Transfer raises questions as to the level of the new position and the right to return to the original position when the reasons for the transfer are no longer valid. Alternative (c) raises questions on the duration of leave and whether it is paid or unpaid.

Lithuania. Lithuanian Workers' Union: Yes. The level of earnings should not be reduced in this case.

Malaysia. MTUC: Yes to (a) and (b). Employers have to find an alternative job and not dismiss the employee.

Mauritius. The three measures as proposed above should be adopted in chronological order, leave being given as a last resort when no other alternative has been identified.

MEF: No.

Mexico. Yes to (a) and (b). The granting of leave, as in (c), could be determined through collective bargaining.

Morocco. Yes to (a) and (b) only.
FCCIS: Yes.
CDT: Yes.

Mozambique. Yes to (b) and (c).

Namibia. Should be covered under occupational health and safety practices.
NEF: Yes.
NUNW: Yes. In accordance with the law.

Netherlands. FNV: See Question 25.

New Zealand. See Question 23.
NZEF: See Question 23.
NZCTU: Yes. These provisions are not necessarily too prescriptive as they do not contain formal measurements.

Nicaragua. The three clauses should be included in one paragraph.

Norway. Under national regulations on reproductive damage and working environment, if suitable protection and safety measures fail to give adequate protection, pregnant and nursing employees shall be transferred to another post or cease such work.

Papua New Guinea. In line with national laws and regulations.

Peru. All possibilities should be provided so that the woman can carry out work that does not harm her health.

Poland. KPP: Only (a) and (b).

Portugal. The measures described under (a), (b) and (c) are to be stipulated alternatively. Non-insertion of these rules in the Convention can only be understood because they would jeopardize its ratification by many countries.
CIP: No objection.
UGT: The provision should include an obligation on the employer to evaluate conditions of work and to inform the woman worker of the results of the evaluation and the protective measures subsequently taken. With regard to transfer, the new salary must be compatible with the grade and status of the woman, without any reduction in remuneration. Dispensation from work should involve payment of cash benefits on the same basis as for maternity leave. Such a provision should be included in the revised Convention.

Qatar. Yes to (a) and (b) only.

Romania. CSDR: Transfer to another post.

Russian Federation. National legislation provides that, on the basis of a medical certificate, a pregnant woman's output or performance quota should be reduced, or she should be transferred to lighter work which does not involve factors prejudicial to health, during which her average pay in her former job should be maintained. Until a transfer has been arranged, a pregnant woman shall be released from work and paid her former average wage by the enterprise.

South Africa. BSA: This might not be feasible where the woman is in a key position and in the case of SMEs. Any ILO instrument should take this into account.

Spain. National legislation respecting the prevention of industrial hazards makes provision for maternity protection.
CIG: Yes. But without any negative repercussions on her labour rights and economic entitlements.
CCOO: Yes.

Sweden. A similar approach has been adopted in Sweden. Compensation for this form of leave is provided under national legislation.

Syrian Arab Republic. In the event of transfer, the vacated position should be retained and returned to after maternity leave and nursing have ended.

Tajikistan. Yes to (b).

Trinidad and Tobago. The employee should suffer no reduction in her normal level of earnings.

Turkey. Yes to (a) and (b) only.
TISK: Yes.
TÜRK-IŞ: Yes.

United Kingdom. The provision of an alternative to work involving a risk to health need not be linked to a medical certificate. The need to seek professional advice may be only one aspect of risk assessment. The steps to be taken as set out are the most appropriate.

United States. If the prohibition referenced is a medical one from the woman's examining physician or the result of a *bona fide* occupational qualification.

USCIB: No. American law does not recognize that pregnant women can be prohibited from any type of employment.

AFL-CIO: The woman's full pay and benefits should be maintained during the period of accommodation and her job security guaranteed.

Uruguay. National Chamber of Commerce and Chamber of Manufacturers: Yes to (a) and (b); yes to (c) if leave is covered by social security.

Venezuela. CTV: All necessary measures should be taken and the woman's continued employment guaranteed.

Viet Nam. Yes to (b).

There was strong support from governments, employers' and workers' organizations on the need to provide a graduated set of protective measures for women whose work is subject to a prohibition of employment or involves a risk to health during pregnancy and nursing. The proposed text widens the options provided for in Paragraph 5(4) and (5) of Recommendation No. 95.[1] Very few negative replies were received, although some respondents preferred only two of the three options proposed. Given the large majority of affirmative responses, this provision was retained as *Point 22(2)* of the Proposed Conclusions.

The Office wishes to note that the type of work qualified by the descriptive phrase "subject to a prohibition of employment" would cover instances in which a general prohibition of employment exists for pregnant or nursing women with regard to such work. The phrase "involves a risk to her health" would cover instances in which (a) a risk to the health of pregnant women or nursing mothers has been determined by the competent authority with regard to certain types of work; (b) a risk analysis has determined that a risk to the health of mother or child exists; or (c) a medical doctor has determined that a change in the nature of her work is necessary in the interest of her health or that of her child. While the determination that a change in work is necessary for health reasons would require a medical certificate, an adaptation of working conditions due to a general prohibition may not require medical certification.

With regard to modifications to working conditions, one employers' organization pointed out that SMEs would have the greatest difficulty complying with these requirements and that their application to women in key positions would not be easy. These points were also made concerning transfer. Other concerns expressed with regard to transfer included the need to ensure that the same conditions of employment were respected with regard to wages, benefits, rights and job security. The right to return to the previous post at the end of the period of prohibition was also mentioned. Regarding leave, a number of respondents raised the legal questions with regard to the type of leave to be accorded (i.e. something other than maternity leave), its duration, whether or not it should be paid, and less frequently, the problem of job security. As formulated, these matters would be determined in accordance with national laws, regulations or practice.

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[1] Note also Article 7(1) and (2) of the Night Work Convention, 1990 (No. 171). The proposed provision recalls Article 5(1)-(3) of EU Directive 92/85/EEC.

Should the work referred to in Questions 23 and 24 above include, in particular: **Qu. 25**

(a) arduous work involving the manual lifting, carrying, pushing or pulling of loads;

(b) work involving exposure to biological, chemical and physical agents which represent a reproductive health hazard;

(c) work requiring special equilibrium;

(d) work involving physical strain due to,

(i) prolonged periods of sitting or standing;

(ii) extreme temperatures;

(iii) vibration;

(iv) other?

Global reply to Question 25:

Total number of replies: 16.

Affirmative: 6. Chile, Cuba, Hungary, Italy, Japan, Portugal.

Negative: 1. Australia.

Other: 9. Argentina, Canada, Costa Rica, Mexico, New Zealand, Norway, Sweden, Tunisia, United Kingdom.

Subparagraph (a):

Total number of replies: 87.

Affirmative: 81. Algeria, Austria, Bahrain, Barbados, Belarus, Belgium, Benin, Botswana, Bulgaria, Cameroon, Central African Republic, Chad, Chile, China, Colombia, Comoros, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Germany, Ghana, Guyana, Honduras, India, Indonesia, Islamic Republic of Iran, Italy, Jamaica, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Republic of Moldova, Morocco, Mozambique, Netherlands, Nicaragua, Niger, Oman, Pakistan, Papua New Guinea, Peru, Philippines, Qatar, Romania, Russian Federation, San Marino, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Switzerland, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Turkey, Ukraine, United Arab Emirates, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Negative: 3. Namibia, Tajikistan, United States.

Other: 3. Brazil, Congo, Greece.

Subparagraph (b):

Total number of replies: 86.

Affirmative: 81. Algeria, Austria, Bahrain, Barbados, Belarus, Belgium, Benin, Botswana, Bulgaria, Cameroon, Central African Republic, Chad, Chile, China, Colombia, Comoros, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Guyana, Honduras, India, Islamic Republic of Iran, Italy, Jamaica, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Republic of Moldova, Morocco, Mozambique, Netherlands, Nicaragua, Niger, Oman, Pakistan, Papua New Guinea, Peru, Philippines, Qatar, Romania, Russian Federation, San Marino, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Switzerland, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Turkey, Ukraine, United Arab Emirates, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Negative: 3. Namibia, Tajikistan, United States.

Other: 2. Brazil, Greece.

Subparagraph (c):

Total number of replies: 81.

Affirmative: 74. Algeria, Austria, Barbados, Belarus, Belgium, Benin, Botswana, Bulgaria, Central African Republic, Chad, Chile, China, Colombia, Comoros, Croatia, Cyprus, Czech Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Guyana, Honduras, India, Islamic Republic of Iran, Italy, Jamaica, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Republic of Moldova, Morocco, Mozambique, Nicaragua, Oman, Pakistan, Papua New Guinea, Peru, Philippines, Qatar, Romania, Russian Federation, San Marino, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Switzerland, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Turkey, Ukraine, United Arab Emirates, Venezuela, Viet Nam, Zimbabwe.

Negative: 4. Bahrain, Namibia, Netherlands, United States.

Other: 3. Brazil, Cameroon, Denmark.

Subparagraph (d)(i):

Total number of replies: 81.

Affirmative: 73. Algeria, Austria, Bahrain, Barbados, Belarus, Belgium, Benin, Botswana, Bulgaria, Cameroon, Central African Republic, Chad, Chile, Colombia, Comoros, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Germany, Ghana, Guyana, Honduras, India, Islamic Republic of Iran, Jamaica, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lithuania, Luxembourg, Mali, Mauritius, Republic of Moldova, Morocco, Mozambique, Nicaragua, Niger, Oman, Pakistan, Papua New Guinea, Peru, Philippines, Qatar, Romania, Russian Federation, San Marino, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Switzerland, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Turkey, Ukraine, United Arab Emirates, Venezuela, Viet Nam, Zimbabwe.

Negative: 6. Croatia, Malaysia, Namibia, Netherlands, Tajikistan, United States.

Other: 2. Brazil, Lebanon.

Subparagraph (d)(ii):

Total number of replies: 79.

Affirmative: 75. Algeria, Austria, Bahrain, Belarus, Belgium, Botswana, Bulgaria, Central African Republic, Chad, Chile, China, Colombia, Comoros, Croatia, Cyprus, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Guyana, Honduras, India, Islamic Republic of Iran, Jamaica, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Republic of Moldova, Morocco, Mozambique, Netherlands, Nicaragua, Niger, Oman, Pakistan, Papua New Guinea, Peru, Philippines, Qatar, Romania, Russian Federation, San Marino, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Switzerland, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Turkey, Ukraine, United Arab Emirates, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Negative: 3. Namibia, Tajikistan, United States.

Other: 1. Brazil.

Subparagraph (d)(iii):

Total number of replies: 78.

Affirmative: 74. Algeria, Austria, Bahrain, Barbados, Belarus, Belgium, Botswana, Bulgaria, Central African Republic, Chad, Chile, China, Colombia, Comoros, Croatia, Cyprus, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Guyana, Honduras, India, Jamaica, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Republic of Moldova, Morocco, Mozambique, Netherlands, Nicaragua, Niger, Oman, Pakistan, Papua New Guinea, Peru, Philippines, Qatar, Romania, Russian Federation, San Marino, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Switzerland, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Turkey, Ukraine, United Arab Emirates, Venezuela, Viet Nam, Zimbabwe.

Negative: 3. Namibia, Tajikistan, United States.

Other: 1. Brazil.

Subparagraph (d)(iv):

Total number of replies: 51.

Affirmative: 39. Austria, Barbados, Benin, Chile, China, Colombia, Comoros, Croatia, Ecuador, Ethiopia, Finland, France, India, Jordan, Kenya, Kuwait, Lebanon, Luxembourg, Mali, Mauritius, Morocco, Netherlands, Nicaragua, Niger, Oman, Pakistan, Papua New Guinea, Peru, Qatar, Romania, San Marino, Slovakia, Suriname, Syrian Arab Republic, Trinidad and Tobago, Turkey, Ukraine, Venezuela, Viet Nam.

Negative: 4. Honduras, Sri Lanka, Thailand, United States.

Other: 8. Brazil, Bulgaria, Congo, Egypt, Namibia, Philippines, Spain, Togo.

Argentina. The particular criteria adopted should be determined by each country.

CGT: Yes to (a)-(d)(iv). (a) Such work carries hazards for pregnant women and should be treated in the same way as any other hazardous work. (d)(i) On the basis of a medical certificate. Regular breaks are also possible. (d)(iv) Work in the health sector, which is not compatible with pregnancy; handling cadavers; etc.

Australia. The competent authority should specify which areas present a risk to the mother's health and therefore should be prohibited. Guidelines should be updated to remain relevant.

ACTU: Care should be taken in specifying situations giving rise to a prohibition on employment of pregnant women or nursing mothers. Many of the hazards listed above should be addressed for all workers. For example, biological and chemical agents which are reproductive hazards may affect women before pregnancy and also affect men. These issues should be included as part of an occupational health and safety strategy for all workers.

Austria. (d)(iv) The ban on night work and overtime should be mentioned explicitly in the Recommendation as in Paragraph 5(1) of Recommendation No. 95. Employment on means of transport; wood-working with hand knives; piecework; work with high accident risks, frequent stretching, bending and crouching; offensive odours; psychological pressures; tobacco smoke; infection; work with hazardous machines; exposure to jolts, noise and radiation.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes to (a)-(d)(iv).

Bahrain. (d)(i)-(iii) During the latter part of pregnancy and on the basis of a medical certificate.

Barbados. (d)(i) Regarding sitting, this may be dependent on the quality of the chair and the physical condition of the individual. (d)(iv) Heights.

Belgium. (a) During the last trimester of pregnancy and on medical recommendation. (d)(i) If a risk analysis has resulted in such a prohibition. (d)(ii) Linked to a risk analysis.

Benin. (d)(iv) Exposure to radiation.

COSI: Yes to (a)-(d)(iv). (b) Indicate the products which pose a risk in the event of pregnancy. (d)(iv) Night work; work in a polluted environment.

Brazil. (a)-(d)(iv) Depends on medical appraisal.

CNC and CNI: No to (d)(iv). (a)-(d)(iii) The Recommendation should not determine the prohibitions, but should leave them to be determined in each case on the basis of medical criteria.

CNF: Yes to (a)-(d)(i). (a) And other arduous work not included in the list.

Bulgaria. (d)(iv) Noise, ultrasound, magnetic waves beyond standard limits.

Canada. The evaluation of how arduous the job or how dangerous the exposure to certain substances is should be left up to a medical doctor. These factors may affect each woman differently. Evaluation should be done on a case-by-case basis.

CEC: Yes to (a)-(d)(i).

CLC: Yes to (a)-(d)(iv). (d)(iv) Shift work.

Chile. In general, a ban should be placed not only upon work with inherent risks for the woman's reproductive system, but on any work which entails a health or hygiene hazard. The competent health authority should determine the health risk for the pregnant woman or her child and should clearly notify any other risk factors.

CPC: Yes to (a)-(c); no to (d)(i)-(iii).

China. (d)(ii) The term "extreme temperature" should be defined. (d)(iii) The term "vibration" should be defined. (d)(iv) A pregnant woman should be prohibited from engaging in work that requires frequent bending, climbing or squatting, such as welding, as well as high altitude work, particularly in extreme temperature or poor weather.

Colombia. (a) The Recommendation should be more specific concerning the work prohibited, as broad statements tend more to discriminate than to protect. (b) Specify which type of exposure, which biological agents, which environmental conditions, etc., are dangerous. (c) Specify work, such as performing tasks in elevated positions or on slippery surfaces, that could affect equilibrium. (d)(i) Include specific cases. Change the wording to "work involving remaining in unfavourable positions for long periods of time (standing, sitting or crouching)". (d)(ii) Give specific details of exposure and time. (d)(iii) Give specific details of exposure and time. (d)(iv) Any work that involves danger to the physical and mental health of the mother and her child.

Comoros. (d)(iv) Work requiring extensive movement.

Congo. (a) Specific measures of protection should be taken into consideration. (d)(iv) Pregnant workers in the private sector and in private clinics should be barred from night work after the sixth month of pregnancy.

Costa Rica. The work referred to in questions 23 and 24 will be defined by national legislation in the light of consultations with the relevant workers' and employers' organizations and with representative women's organizations, as provided for in our national legal system.

Croatia. (d)(iv) Other work under (d)(iv) should be prescribed by national legislation.

Cuba. The risk factors should be determined on the basis of medical studies and studies of technical and environmental conditions.

Czech Republic. UZS ČR: (a)-(d)(iii) The extent of forbidden types of work should be further specified by the appropriate national health bodies.

Denmark. (c) This provision is too specialized for an ILO Recommendation.

LO: (a) and (c)-(d)(iii) These provisions should be moved to the Convention.

Dominica. CSA: Yes to (a)-(d)(iii).

DAWU: No to (a)-(d)(iii).

DTU: Yes to (a)-(d)(iv). (d)(iv) Managerial and supervisory work involving mental stress, jobs which entail frequent travelling, etc.

WAWU: Yes to (a)-(d)(iii).

Ecuador. (b) With the following addition: exposure to factors of mental stress. (d)(ii) Join extreme temperatures and noise. (d)(iv) Dust, physical loads, ionizing radiations, the handling of chemicals, fungi, parasites, bacteria. Pressure as experienced in a military or police context, levels of mental stress associated with time pressure and deadlines.

CONAMU: (d)(iv) Noise, viruses, fungi, parasites and bacteria, to which there is primarily exposure in hospital and agricultural activities.

UGTE: Yes to (a)-(d)(iv). (d)(iv) Exposure to radiation.

Egypt. (d)(iv) All arduous and dangerous work that might jeopardize the health of women must be prohibited.

Federation of Egyptian Industries: Yes to (a)-(c). (d)(i) Dangerous and arduous work, according to its definition in national law concerning dangerous work in which the employment of women is prohibited.

Estonia. Estonian Association of Trade Unions: Yes to (a)-(d)(iii); no to (d)(iv).

Ethiopia. (d)(iv) Monotonous work and work requiring special attention that may lead to psychological problems, e.g working on control panels, VDUs, etc.

Finland. The whole list should be updated according to the latest research results, including psycho-social and other risk factors, as might be specified by medical experts. (d)(iv) Noise and shift work, including night work, may be prejudicial to the foetus or the pregnancy.

KT: No to (d)(i).

Federation of Finnish Enterprises: No to (a)-(d)(i).

TT and LTK: No to (a), (c) and (d)(ii)-(iii).

France. CNPF: No to (a), (c)-(d)(i), and (d)(iii)-(iv); yes to (b) and (d)(ii). (b) Some work involving exposure is not prohibited for pregnant workers, but limited.

CFDT: Yes to (a)-(d)(iv). (d)(iii) Including noise. (d)(iv) Any work involving heavy physical or psychological demands.

CFE-CGC: Yes to (a)-(d)(iii); no to (d)(iv).

CFTC: Yes to (a)-(d)(iv). (b) This prohibition should be permanent. (d)(iv) Night work, long hours (more than eight hours at a time).

CGT-FO: Yes to (a)-(d)(iv). (d)(iv) Highly stressful work.

Germany. European Union Directive 92/85/EEC also contains minimum provisions for employment protection (Articles 5-7 and Annexes I and II).

BDA: Yes to (a)-(d)(iii); no to (d)(iv).

DGB: Yes to (a)-(d)(iv). (d)(iv) Work in front of VDUs and piecework.

DAG: Yes to (a)-(d)(iv). (d)(iv) Work on production lines and involving VDUs.

Ghana. NCWD: Yes to (a)-(d)(iii). (d)(iv) Involvement in active military or security service.

GEA: Yes to (a)-(b), (d)(i) and (d)(iii); no to (d)(ii) and (d)(iv).

Greece. (a) The types of work mentioned mostly concern the period of pregnancy rather than nursing. See Question 23. (b) If this point refers to all women of reproductive age rather than simply pregnant workers, then we are opposed.

Honduras. COHEP: Yes to (a) and (b) and (d)(ii) and (iii); no to (d)(i). (a) Any work involving excessive physical effort. (d)(ii) The temperature variations should be determined. (d)(iii) Establish minimum and maximum levels.

Hungary. All these circumstances justify the alleviation of work performed by women who are pregnant or have recently given birth. Prohibited positions include, for example, heavy physical work, work under intensive psychic stress or extreme conditions (heat, noise); exposure to chemical agents implying increased danger to the human body or threatening reproduction or implying genetic hazard; exposure to ionizing radiation or locally acting vibration; underground work, such as mining; or work on the sewage system, etc.

India. (d)(iv) Very high noise levels, night work, overtime work and work in unhygienic conditions.

AITUC: Yes to (a)-(d)(iv). (d)(iv) Workplace dangers.

Indonesia. APINDO: No to (a)-(d)(iii).

Islamic Republic of Iran. (d)(ii) It is necessary to review this issue comprehensively in the light of recent developments in the working environment and discussions of safety at work.

Iraq. General Federation of Trade Unions: Yes to (a)-(d)(iii).

Italy. These provisions reflect those of Recommendations No. 114 (1960), especially Paragraphs 16 and 27; No. 128 (1967), Paragraph 18; and No. 144 (1971), Paragraph 19.

Jamaica. JEF: No to (a)-(d)(iii).

Japan. Yes, if the comments on Questions 23 and 24 are adopted.

NIKKEIREN: The prohibition of night work and overtime should not be included in any new instrument.

JTUC-RENGO: Yes to (a)-(d)(iv). *(d)(iv)* Extreme noise.

Jordan. (d)(iv) Any heavy work which might affect the health of the employed woman.

Amman Chamber of Industry: Yes to (a)-(d)(iv). (d)(iv) Any oppressive factor which could be harmful for a woman who has just given birth.

Federation of Jordanian Chambers of Commerce: Yes to (a)-(d)(iii); no to (d)(iv).

General Federation of Jordanian Trade Unions: Yes to (a)-(b), (d)(i) and (d)(iii); no to (d)(ii) and (d)(iv).

Kenya. (d)(iv) Work causing extreme physical strain.

Lebanon. (b) The prohibition should include (b), provided the competent authority designates the types of work that represent a reproductive health hazard. (d)(i) The enterprise should be allowed to determine the duration of such periods and to allow rest periods after prolonged periods of sitting or standing. (d)(iv) Work involving the emission of strong gusts of dust.

Lithuania. Confederation of Lithuanian Entrepreneurs/Employers: Yes to (a)(d)(iv). Anything harmful to the health and well-being of the mother and child must be prohibited.

Centre of Lithuanian Trade Unions: Yes to (a)-(d)(iv). (d)(iv) High dust concentrations at the workplace.

Lithuanian Workers' Union: Yes to (a)-(d)(iv). (d)(iv) High dust concentrations.

Unification of Lithuanian Trade Unions: Yes to (a)-(d)(iii); no to (d)(iv).

Luxembourg. (d)(iv) Underground work in mines, exposure to occupational illnesses harmful to pregnancy, piecework.

Malaysia. (a) Appropriate guidelines should be given for "loads". (d)(ii)-(iii) To a reasonable extent.

MAPA: Yes to (a)-(d)(iii).

MEF: No to (a) and (c)-(d)(iv); yes to (b). *(a)* The above is a question of degree and prohibition should not be made purely based on the above factors.

MTUC: Yes to (a)-(d)(iv). (d)(iv) Radioactive substances, dust and noise.

Mali. (d)(iv) Night work.

Mauritius. (d)(i) In order not to exacerbate personal medical conditions.

Mexico. The text should be drafted in a more general manner, such as: "Prejudicial and unhealthy work is considered to be that which, due to the nature of the work, the physical, chemical and biological conditions of the environment in which it is performed, or the properties of the raw materials used, could affect the life and physical and mental health of expectant mothers or their children". It could also indicate that "national legislation will determine the tasks to be included in this definition".

Morocco. (d)(iv) Use of dangerous machinery.

FCCIS: Yes to (a)-(d)(iii).

CDT: Yes to (a)-(d)(iv). (d)(iv) Underground work, dangerous working conditions.

Mozambique. OTM: Yes to (a)-(d)-(iv).

Namibia. (a)-(d)(iv) Occupational health and safety.

NEF: (a) Strenuous physical work could jeopardize the woman's and baby's health, unless otherwise permitted by a medical practitioner. (b) This would be unacceptable because of possible teratogenic effects on the unborn baby. (c) On the recommendation of a medical practitioner only. (d)(i) The merits of each situation should be taken into account. (d)(ii) Merit-based assessment. (d)(iii) On merit.

NUNW: (a) Pregnant women are not entitled to work with heavy loads. *(b)* Pregnant women should work in areas with no exposure or lower levels of exposure. (d)(i)-(d)(iii) Special attention should be given to pregnant women. (d)(iv) Any hazardous working environment.

Netherlands. (d)(iv) Noise and excess pressure. Stooping, squatting or kneeling should be avoided.

FNV: Yes to (d)(i). (d)(iv) Article 5(1) of Recommendation No. 95 prohibiting night work and overtime work for pregnant and nursing women should be included in a new Recommendation or even in a new Convention.

New Zealand. The new instruments should provide general guidance and principles rather than imposing specific technical requirements. For example, a general prohibition on work dangerous to the health of a pregnant woman, or a nursing woman and her child, would be more effective than providing a list of prohibited environmental circumstances. This type of matter should be covered under an instrument such as the Occupational Safety and Health Convention, 1981 (No. 155), rather than being included in an instrument dealing with maternity leave. The Occupational Safety and Health Convention should be able to cover a variety of situations where work is dangerous to the health of employees, including the health of pregnant women, or nursing mothers and their children.

NZEF: The extent to which particular work will be hazardous is likely to vary from country to country depending on the ability to provide protections, including the development of new ways of doing things.

NZCTU: These provisions are not necessarily too prescriptive as they do not contain formal measurements.

Nicaragua. (d)(iv) Unhealthy conditions.

Niger. (b) Such work should be forbidden to all for whom it poses a reproductive hazard. (d)(iv) Other types of work should be identified through consultation with the social partners. This should be left to the discretion of the State.

Norway. The guide to national regulations on reproductive damage and working environment contains a non-exhaustive list of risk factors, including most of the items listed here.

Oman. (d)(iv) Work that could induce psychological or mental stress. These are to be determined according to the nature of the job occupied by the woman.

Pakistan. (d)(iv) Any work injurious to the health of mother and child should be prohibited for a woman.

PNFTU: No to (a)-(d)(iii).

Papua New Guinea. (a)-(d)(iii) Under our national laws and regulations, women are restricted from such work or activity. (d)(iv) Other heavy duty work, strenuous work, working longer hours, night work.

Peru. (d)(iv) All human beings, but particularly pregnant workers, should be protected in general from work that implies a risk, danger or deterioration to their health.

CUT: Yes to (a)-(d)(iii).

Philippines. (a) and (c) Subject to the limitations and restrictions of a submitted medical certificate to be reviewed and confirmed by the employer's medical authority. (d)(iv) Night work, overtime work.

Poland. KPP: Yes to (a)-(d)(i).

OPZZ: Yes to (a)-(d)(iv). (d)(iv) In slaughter-houses.

Portugal. (d)(iv) Work involving compressed atmospheres, underground work and high noise levels.

CIP: The definition of dangerous work should be left to national legislation.

CGTP: Yes to (a)-(d)(iii).

UGT: The prohibition on overtime and night work should be included in the Recommendation. Include also any work capable of causing malformation of the foetus or harm to children fed on their mothers' milk.

San Marino. (d)(iv) Ionizing radiations, night work, particularly arduous work.

South Africa. (d)(iii) Especially for a prolonged period.

BSA: (a)-(d)(iii) See Question 24.

Spain. (b) It would be better to use a more specific criterion than physical, chemical and biological agents, along the lines of DIR 92/85/EEC and its annexes. (d)(iv) There is no *a priori* need to include further factors requiring a physical effort.

Suriname. ASFA: Yes to (a)-(d)(iii). (d)(iv) Depending on the type of job.

FAL: Yes to (a)-(d)(iv). (d)(iv) Unsafe or unhealthy environment.

Sweden. The factors enumerated here are covered in Swedish occupational safety and health regulations, which are based on European Directive 92/85/EEC. Both instruments require an assessment of risks liable to be entailed by environmental factors.

Syrian Arab Republic. (a) Maximum weights must be set. (d)(iv) Any work requiring physical effort or that is inherently dangerous, such as working in mines, quarries, etc.

Togo. (d)(iv) Other cases should be determined by the competent national body.

Trinidad and Tobago. NATUC: No to (a)-(d)(iii).

Tunisia. It would be useful to mention examples of such work in order to guide national legislation. It should then be up to national legislators to determine the conditions of the prohibition according to the type of work and situation of the woman, whether pregnant or nursing.

Turkey. (d)(iv) Work prejudicial to health should be determined by gynaecologists, pediatricians and commissions comprised of labour health and safety experts.

TISK: A more realistic solution would be to provide, in general terms, that women must not be employed on heavy work during pregnancy and after confinement and to leave the details to national legislation, unless the type of work on which they must not be employed is specified in a medical certificate.

TURK-IŞ: Yes to (a)-(b) and (d)(i)-(iii).

Ukraine. (d)(iv) Increased levels of radiation.

United Kingdom. The particular aspects of work referred to should certainly be considered in looking at substances, processes or conditions which may affect the health of new or expectant mothers. However, if these are related back to Question 23, new or expectant mothers would be prohibited from a wide range of jobs. Any list of particular aspects of work should be used as a guide on what to look for, rather than as a basis for prohibitions.

United States. USCIB: No to (a)-(d)(iv). (b) An employer's policy of excluding women capable of bearing children from jobs that may be hazardous to unborn children explicitly discriminates against women on the basis of their sex, according to a US Supreme Court decision.

AFL-CIO: Protections for all workers, rather than prohibitions of select groups, should be the course of action taken. Any distinctions based on a greater risk or a probability of risk for a particular group should be supported by a clear demonstration of risk to a discrete group, and the absence of comparable risks for other workers or groups. No distinctions may be made based on presumptions of greater risk.

Uruguay. National Chamber of Commerce and Chamber of Manufacturers: Yes to (a)-(d)(iii); no to (d)(iv). (a) Such measures should not constitute discrimination against women.

Venezuela. (d)(iv) Psycho-social factors at work, such as insufficiently demanding work, excessive workload, pace of work, "mobbing", organization of work or the enterprise.

Viet Nam. (a) The instrument should guarantee that women who have to leave their jobs do not suffer any loss thereby. (d)(iv) Radiation, noise, dust.

The provisions foreseen by Question 25 correspond to those of Paragraph 5(3) of Recommendation No. 95 with two main differences. First, work involving exposure to biological, chemical and physical agents which represent a reproductive health hazard has been added. Concern with the threat posed by such hazards has grown significantly since 1952, as witnessed by the fact that its proposed inclusion garnered extremely strong support. Second, prolonged periods of sitting and exposure to extreme temperatures were added. Both received firm support. *Point 22(3)* of the Proposed Conclusions has been drafted in accordance with the very strong support of governments and workers' organizations and majority support of employers' organizations that these types of work should be included.

The questionnaire did not contain questions regarding night work and overtime, which in Paragraph 5(1) of Recommendation No. 95 were prohibited. Six governments and several workers' organizations suggested the inclusion of night work; four governments and a few workers' organizations proposed the inclusion of overtime. With regard to night work, it should be noted that Article 7 of the Night Work Convention, 1990 (No. 171) provides that measures should be taken to ensure that an alternative to night work is available to women workers before and after childbirth, for a period of at least sixteen weeks, without loss of income or benefits. Article 2 of the 1990 Protocol to the Night Work (Women) (Revised) Convention, 1948 (No. 89), provides that exemptions to the prohibition of night work for women shall not be applied during a period before and after childbirth of at least 16 weeks, although national laws or regulation may allow for the lifting of the prohibition at the express request of the woman worker concerned on condition that neither her health nor that of her child will be endangered. Attention is drawn to these standards in the event that the Conference might wish to include a provision regarding night work.

Question 25 referred back to both Questions 23 on prohibitions of employment and 24 on measures to be taken with regard to prohibited work or work involving a risk to health. An observation by the United Kingdom drew attention to the fact that, if linked to Question 23, the list would have encouraged prohibition of a wide range of jobs to pregnant and nursing women. Cognizant of this risk, the Office has drafted *Point 22(3)* of the Proposed Conclusions to refer only to *Point 22(2)* regarding the types of measures to be taken with regard to such work.

Opinion was divided between countries that felt that the Recommendation should carry a list of such types of work and those which preferred not to include prescriptive elements. It was noted that there were great variations in countries' abilities to provide appropriate protections. Among those requesting guidance, specific mention was made regarding guidelines for load limits and permissible levels of exposure. The need for a doctor's evaluation or the need to make a case-by-case or merit-based analysis was mentioned by several respondents. The Office notes that the list proposed in *Point 22(3)* is non-exhaustive.

Question 25(d)(iv) offered the possibility for additional types of work to be included in the list. The most frequent proposals, ranked in order by number of times mentioned, from most to least, included the following: exposure to dust, night work, overtime or long hours, travelling, noise, and stress.

PROVISIONS FOR NURSING MOTHERS

Qu. 26

(1) Should a woman be entitled to daily break(s) to nurse her child?

(2) If so, should such breaks be counted as working time and remunerated accordingly?

(3) Should the frequency and length of nursing breaks, pursuant to national law and practice, be adapted to particular needs on the presentation of a medical certificate?

(4) Where practicable, should it be possible to combine the time allotted for nursing breaks to allow a reduction of hours of work at the beginning or at the end of the working day?

Paragraph 1:

Total number of replies: 103.

Affirmative: 89. Algeria, Angola, Argentina, Australia, Austria, Bahrain, Barbados, Belarus, Benin, Botswana, Brazil, Bulgaria, Cameroon, Central African Republic, Chad, China, Colombia, Comoros, Costa Rica, Cyprus, Czech Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Greece, Guyana, Honduras, Hungary, India, Islamic Republic of Iran, Italy, Jamaica, Japan, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Mexico, Republic of Moldova, Morocco, Mozambique, Namibia, Netherlands, Nicaragua, Niger, Pakistan, Papua New Guinea, Philippines, Poland, Portugal, Qatar, Romania, San Marino, Saudi Arabia, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United States, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Negative: 4. Belgium, Croatia, Oman, Peru.

Other: 10. Canada, Chile, Congo, Cuba, Denmark, New Zealand, Norway, Russian Federation, Seychelles, United Kingdom.

Paragraph 2:

Total number of replies: 96.

Affirmative: 87. Algeria, Angola, Argentina, Austria, Bahrain, Barbados, Belarus, Benin, Botswana, Brazil, Bulgaria, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Cyprus, Czech Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Greece, Guyana, Honduras, Hungary, India, Islamic Republic of Iran, Italy, Jamaica, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Mali, Mauritius, Mexico, Republic of Moldova, Morocco, Mozambique, Namibia, Netherlands, Nicaragua, Niger, Pakistan, Papua New Guinea, Philippines, Poland, Portugal, Qatar, Romania, San Marino, Saudi Arabia, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Switzerland, Syrian Arab Republic, Tajikistan, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United States, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Negative: 5. Denmark, Malaysia, Oman, Peru, Thailand.

Other: 4. Japan, Norway, Russian Federation, United Kingdom.

Paragraph 3:

Total number of replies: 93.

Affirmative: 72. Algeria, Argentina, Austria, Barbados, Belarus, Benin, Botswana, Brazil, Bulgaria, Cameroon, Canada, Central African Republic, Chile, Colombia, Comoros, Costa Rica, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, Germany, Greece, Guyana, Honduras, India, Islamic Republic of Iran, Italy, Jamaica, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Republic of Moldova, Namibia, Nicaragua, Niger, Pakistan, Papua New Guinea, Poland, Portugal, Qatar, Romania, San Marino, Saudi Arabia, Slovakia, Slovenia, Suriname, Switzerland, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United States, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Negative: 11. Bahrain, Ghana, Mozambique, Netherlands, Oman, Peru, Philippines, Spain, Sri Lanka, Syrian Arab Republic, Togo.

Other: 10. Chad, Congo, Hungary, Japan, Mexico, Morocco, Norway, Russian Federation, South Africa, United Kingdom.

Paragraph 4:

Total number of replies: 93.

Affirmative: 64. Algeria, Argentina, Austria, Bahrain, Barbados, Benin, Botswana, Brazil, Cameroon, Canada, Central African Republic, Chad, China, Comoros, Costa Rica, Cyprus, Czech Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, Germany, Ghana, Greece, Guyana, Honduras, Hungary, India, Islamic Republic of Iran, Jordan, Kenya, Kuwait, Latvia, Lebanon, Lithuania, Luxembourg, Mali, Mauritius, Republic of Moldova, Morocco, Mozambique, Pakistan, Papua New Guinea, Philippines, Poland, Portugal, Qatar, Romania, Slovakia, Slovenia, South Africa, Spain, Suriname, Switzerland, Tajikistan, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, Viet Nam, Zimbabwe.

Negative: 18. Belarus, Chile, Colombia, Jamaica, Republic of Korea, Malaysia, Namibia, Netherlands, Nicaragua, Oman, Peru, San Marino, Sri Lanka, Syrian Arab Republic, Thailand, Togo, United States, Venezuela.

Other: 11. Belgium, Bulgaria, Congo, Denmark, Italy, Japan, Mexico, Niger, Norway, Saudi Arabia, United Kingdom.

Argentina. (1) Legislation should provide for this.
CGT: Yes to (1)-(4).
UIA: Yes to (2).

Australia. (1) Australia's agreement is conditional on revised wording. Rather than "to nurse her child", Australia prefers "for lactation purposes" to cover mothers who choose to express milk at work, rather than to breastfeed their infant. Further, in English "to nurse" has multiple meanings, including to care for the sick and to nurture. Lactation or breastfeeding is the preferred terminology.
ACTU: Yes to (1)-(4).

Austria. (1)-(2) Article 5 of Convention No. 103 (breaks for nursing) should be maintained in the Convention. (4) If so requested by the woman worker.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes to (1)-(4).

Bahrain. (4) Provided this takes into account the interest of the work and the circumstances of the woman.

Barbados. (2) The campaign to promote breastfeeding among working women will not be successful if the mother is disadvantaged.

Belgium. (1) The woman who desires to nurse her child should have the possibility to do so according to national practice. The Recommendation should foresee different options in order to encourage breastfeeding. (4) The Recommendation should not go into such detail.

CNT: (1) The right of the mother to freely choose to nurse her child and the material possibility for her to exercise this free choice should be guaranteed in the instrument. Implementation should be left to member States to handle in a manner appropriate to their national culture.

Benin. COSI: Yes to (1)-(4).

Brazil. (1) and (3) The form, frequency and duration of the breaks should be appropriate to the lifestyle and working conditions of the woman. (4) Must be in accordance with the tasks performed and lifestyle of the woman.

CNC and CNI: Yes to (1)-(4).

CNF: Yes to (1)-(3); no to (4). (1) Otherwise, crèche expenses should be paid.

Bulgaria. (4) Ministry of Labour and Social Policy: Yes; Ministry of Health: No.

Cameroon. (1) To encourage breastfeeding.

Canada. (1) Daily breaks for nursing should not be legislated in any way, and are best left to established practice. Prohibiting a woman from nursing her child may constitute, under certain circumstances, discrimination on the basis of sex under national legislation. (2) If included in the Recommendation, breaks should be counted as time worked. (3) It may prove advantageous for employers to let employees with special needs breastfeed their child rather than to grant leave altogether. (4) The key words being "where practicable".

CLC: Yes to (1)-(4).

Central African Republic. (2) A contrary view would indicate a will to discriminate and would also restrict the woman's earnings. (3) The doctor's opinion should be the determining factor.

Chad. (3) Only for multiple births.

Chile. (1) The nutritional, immunological and psychological benefits of breastfeeding contribute to the child's social development. This provision must be considered as an aid to maternity protection. (3) Health benefits justify such a provision. When nursing breaks are regulated in a rigid manner, the woman often finds it difficult to make use of them in practice. (4) Because these provisions are designed for nursing, flexibility should be considered as in the previous question. However, if the very right were to be modified (i.e. a right to feed rather than breastfeed), it should then be granted to either of the parents.

CPC: Yes to (1)-(2) and (4); no to (3).

Colombia. (4) This alternative could undermine the spirit of the standard, since the child would not be nursed by its mother.

Congo. (1) They should benefit from nursing breaks determined in accordance with national law and practice. (2) Nursing breaks should not result in the loss of acquired rights. (3) They should be fixed by national law and practice, in collaboration with social partners. (4) Preferably at the beginning of the working day.

Costa Rica. (4) Provided that there is agreement between the employer and worker.

Croatia. (1) Nursing breaks should not be regulated by either instrument.

Croatian Association of Employers: (1) The Convention should regulate this issue. Yes to (2)-(4).

KNSH, SSSH, HUS, MATICA and KHSJSN: Yes to (1)-(4).

Cuba. (1) Nursing breaks during working hours do not achieve the desired objective, bearing in mind the location of the work sites, the distance from home, transportation difficulties, the fact that not all children attend child-care centres at or near the work site, and other disadvantages. It is more beneficial to extend maternity leave to 12 weeks following confinement to allow uninterrupted nursing by the mother, and to offer the opportunity to take other types of leave once the postnatal leave has come to an end, until the child is six months old.

Cyprus. (1)-(2) To be transferred to the Convention.

Czech Republic. UZS ČR. (4) According to a doctor's recommendation.

Denmark. (1) Such a provision would not comply with Danish custom. (4) Such a scheme would be unnecessarily complicated.

LO: Yes to (1) and (4).

Dominica. CSA. Yes to (1)-(3); no to (4). (4) Breaks should be taken when necessary.

DAWU: Yes to (1)-(4).

DTU: Yes to (1)-(2); no to (3)-(4). (3) It is expected that mothers must nurse their child unless otherwise prescribed. Therefore, such practice should be allowed by consent. (4) Such benefits should be a right in particular cases and circumstances where normal work and those benefits coexist.

WAWU: Yes to (1)-(4).

Ecuador. (3) The necessary time should be specified. If extra time is needed, a medical certificate should be presented.

CONAMU: Yes to (1)-(2) and (4). (3) A medical certificate should not be necessary to reach agreement on this matter. The employer and the woman should set the frequency and length of the breaks in accordance with the needs of the mother and the child. (4) To be settled between the employer and the woman.

UGTE: Yes to (1)-(4). (3) To be effective this provision must be flexible. (4) This option would help to reconcile the needs of maternity with work.

Estonia. Estonian Association of Trade Unions: Yes to (1)-(4).

Ethiopia. (1) Providing the break should depend upon the schedules of work, shift systems and above all the proximity of the woman's home to the workplace. (4) Based on the local conditions.

CETU: Yes to (1)-(4). (3) Provided the mother agrees. (4) Provided that it does not go against the will of the mother and the child.

Finland. (1) As a rule, the worker should have the possibility of maternity leave of such length that no separate arrangements for nursing would be needed. (2) If appropriate in the national context.

TT, LTK, Federation of Finnish Enterprises and KT: No to (1)-(4).

France. CNPF: Yes to (1); no to (2)-(4).

CFDT: Yes to (1)-(3); no to (4). (3) For example, for premature infants. (4) Allow for some flexibility in the working day.

CFE-CGC: Yes to (1)-(3); no to (4). (4) The purpose of the break is to nurse the child, not to result in a reduction in working time.

CFTC: Yes to (1)-(3); no to (4). (3) To avoid unjustified absenteeism and/or employer's control. (4) Or else offer this possibility to all women who bottle-feed their children!

CGT-FO: Yes to (1)-(4).

Germany. (1) At the nursing mother's request.

BDA: Yes to (1); no to (2)-(4). (1) and (4) Only if the working time is made up.

Ghana. NCWD: Yes to (1)-(4).

GEA: Yes to (1)-(2) and (4); no to (3).

TUC: Yes to (1)-(4). (3) Women with multiple births should get more time.

Guyana. (4) At the end of the day.

Honduras. (1) At the beginning or end of her day's work. (4) In order not to interrupt the continuity of work during the day.

COHEP: No to (1)-(2); yes to (3)-(4).

Hungary. (3) A general regulation would be sufficient. A medical certificate should be required only in unusual cases.

India. AITUC: Yes to (1)-(3). (1)-(2) As per Convention No. 3. (3) As per national law or collective agreement.

Bharatiya Mazdoor Sangh: Yes to (1); no to (3)-(4). (2) Remuneration for nursing breaks is an investment in health and reduces future medical expenses. (3) The frequency and length of breaks should be uniformly decided on a scientific basis. Laws and practice should be changed accordingly. (4) Intermittent breaks are necessary.

HMS: Yes to (1)-(2) and (4); no to (3).

Indonesia. APINDO: Yes to (1)-(3); no to (4).

Islamic Republic of Iran. (4) Some conditions should apply with regard to conditions of work, timing, and the need for agreement between employer and employees.

Iraq. General Federation of Trade Unions: Yes to (1)-(4).

Italy. (1) The working mother should have the right to leave the enterprise unless a special room for nursing is provided on the premises.

Jamaica. JEF: No to (1)-(2); yes to (3)-(4).

Japan. (2)-(4) This should be determined by each Member in accordance with that country's actual situation. There should not be such a provision in the Recommendation.

NIKKEIREN: Yes to (1) and (4); no to (2). (1) The period of nursing and other details should be clarified. (2) National laws and regulations do not consider "nursing time" as "working time". Remuneration for nursing breaks would be problematic. (3) It should be left to national laws and regulations.

JTUC-RENGO: Yes to (1)-(2) and (4). (1)-(2) These provisions should be included in the Convention. (3) This provision should remain as in Convention No. 103.

Jordan. (4) If based on an agreement between the employed woman and the employer.

Amman Chamber of Industry: Yes to (1)-(3), no to (4). (4) Each case should be dealt with separately.

Federation of Jordanian Chambers of Commerce: Yes to (1)-(3). (4) At the end of the day.

General Federation of Jordanian Trade Unions: Yes to (1) and (3); no to (2) and (4).

Kenya. (1) This should be determined through collective agreements. (2) So long as the breaks do not exceed the limit set through individual contracts or collective agreements.

Republic of Korea. (1) Only for children under a certain age.

KEF: No to (1)-(2); yes to (4).

Kuwait. (2) Yes, in economically developed countries. In other countries, breaks may be deducted from working time and paid half-wages.

Lebanon. (1) The competent authority should determine the duration of such breaks and benefits involved. (2) Details should be left to individual member States. (3) Nursing breaks should be determined by individual member States. (4) Yes, but in consultation with the employer. A distinction should be made between situations where nursing facilities are available on or near the premises, and where nursing is to be done at home. The latter would require that the time allotted for nursing be combined.

Lithuania. Confederation of Lithuanian Entrepreneurs/Employers: Yes to (1)-(3). (4) Upon mutual agreement.

Unification of Lithuanian Trade Unions: Yes to (1)-(3); no to (4).

Malaysia. (1) If the workplace provides for a child-care centre, and adjustments are made if possible to her hours of rest.

MAPA: No to (1).

MEF: No to (1).

MTUC: Yes to (1)-(3); no to (4). (4) It should be on the employer's time.

Mali. (4) Offer the possibility of taking nursing breaks at two separate times.

Mauritius. MEF: Yes to (1)-(3); no to (4). (2) If more than 12 months' continuous service has been attained by the mother.

Mexico. (3) National legislation should determine the nursing breaks. Collective bargaining is the best way of regulating this situation. (4) Not as a predetermined obligation, but as a collective bargaining possibility.

Morocco. (1)-(3) These provisions should be included in the Convention. (4) In agreement with the employer.

FCCIS: (1)-(4) To be negotiated.

CDT: Yes to (1)-(3). (4) At the end of the day.

Mozambique. (2) This right should be established by national legislation. No deduction should be made from wages. (3) It is sufficient for the document to state that the worker has a child of nursing age. (4) An interruption of work logically constitutes a reduction in working hours.

Namibia. (1) Breaks should be limited to an agreed period, frequency and length.

NEF: Yes to (1)-(3); no to (4). (2) To be negotiated through collective agreements or one-on-one negotiations.

NUNW: Yes to (1)-(3); no to (4). (2) This may vary in accordance with collective agreements. (3) National machinery should put this into practice.

New Zealand. This is not a matter for international obligations. Specific arrangements for nursing should be a matter for negotiation between the parties to an employment contract.

NZEF: Arrangements of this nature are best left to the employer and employee, since work situations vary markedly.

NZCTU: Yes to (1)-(4).

Netherlands. FNV: Provisions for nursing mothers should be included in the new Convention.

Niger. (4) This should be addressed by national legislation.

Norway. (1) This would be in accordance with national legislation. (2) This depends on the agreement between the employer and employee. (3) Under national law, a woman who is nursing her child is entitled to request the time necessary for this purpose or a reduction of working hours by up to one hour per day. (4) This is possible under national legislation.

Oman. (1) and (2) The national economy should not have to assume the burden of nursing breaks, as long as bottle-feeding is available.

Pakistan. PNFTU: Yes to (1)-(4).

Papua New Guinea. (4) At the end of the working day.

Peru. (1) May be provided through collective or individual agreements. (2)-(3) To be determined by national legislation. (4) If accepted, the woman should be given the choice.

CUT: Yes to (1)-(3). (2) To avoid additional labour costs which could negatively affect women's employment, nursing breaks should, in principle, be paid through social security or public funds. If that is not currently possible, the breaks should be paid by the employer, but reimbursed when resources become available. (4) No, if nursing breaks are considered as working time and paid. Otherwise, yes.

Philippines. (1) The provision of lactation break(s) is suggested to enable lactating mothers to express their milk while in the workplace. (3) To ensure uniformity in application and no discrimination. (4) This matter should be subject to consultation with employers and workers.

Poland. (3) None the less, such a solution could negatively affect the organization of work.

KPP: Yes to (1)-(4).

OPZZ: Yes to (1)-(4).

Portugal. (1) This entitlement should be stipulated in the Convention.

CIP: No to (2). (1) This right should be restricted to breastfeeding. (3) Limits should be set. (4) The global reduction is incompatible with the purpose of the break.

CGTP: Yes to (1)-(3). *(4)* If in the interests of the woman, the child and the enterprise.

UGT: Yes to (2) and (4). (1) The Convention should contain the following provision: "Nursing should be a right of the working mother, and she should be entitled to breaks for that purpose". (3) The Recommendation should provide two hours for nursing breaks. (4) By agreement between the worker and the employer.

Romania. Nursing breaks and working time reductions to nurse and care for the child are included in working time and do not entail consequences on remuneration or other material rights. If the child is not at or near the workplace, then a global reduction of working time should be undertaken by combining nursing breaks.

National Council of Private Small and Medium-sized Enterprises: Yes to (1)-(4). (4) Only if the distance between home and work is too great to allow nursing breaks in the course of the working day.

Russian Federation. National law provides for nursing breaks, which are counted as working time and remunerated. The duration of breaks and the conditions under which they are provided are determined taking into account the mother's wishes.

Saudi Arabia. (4) Depending on national legislation.

Seychelles. (1)-(4) No provision is made for nursing breaks.

Slovakia. (4) There is a possibility that, by combining the nursing breaks, they will not be credited as working time paid by the employer.

Confederation of Trade Unions of the Slovak Republic: No.

Slovenia. (1) Only the first 52 weeks after delivery. (3) To be determined by national laws and regulations.

South Africa. (1) Breaks should be provided whether or not they have access to the child during the day. Time off may be needed to express milk. (3) A medical certificate should not be required. The birth certificate may be requested.

BSA: (1)-(4) No. BSA does not believe in an entitlement to such breaks. This matter should be dealt with in individual collective bargaining, not in an ILO instrument.

Spain. (3) This measure could cause uncertainty and hinder the employment of women of child-bearing age.

CIG: Yes to (1)-(4).

CCOO: Yes to (1)-(3).

Sri Lanka. (3) Nursing breaks can be determined by law.

Suriname. ASFA: No to (1)-(3); yes to (4). (1)-(3) Additional leave for this purpose could be provided on a doctor's advice. (4) Depending on the type of job.

FAL: Yes to (1)-(4).

Syrian Arab Republic. (2) If not remunerated, it shall negatively impact nursing women.

Togo. (1) Respecting national law and practice.

Trinidad and Tobago. ECA: No to (1)-(4). Breast milk can be expressed for use at a later time.

Tunisia. (3) "Particular needs" should be clarified. *(4)* Subject to agreement between the woman and her employer.

Turkey. TISK: Yes to (1)-(2) and (4); no to (3). (3) Breaks should be taken as uniformly as possible. The definition in national legislation of daily nursing breaks should prevent variations stipulated in medical certificates.

TÜRK-IŞ: Yes to (1)-(4).

United Kingdom. (1)-(4) Arrangements should be left to each Member to determine. We could support a recommendation to encourage employers to adopt family friendly employment practices.

United States. (2) Such breaks should be in accordance with other rest and meal breaks provided by an employer. (3) Minimum breaks should be established with flexibility to allow for special needs. (4) If the employer is flexible in permitting the breaks to be used when needed, there should not be a need for a "reduction" of hours at the beginning or end of a workday. Flexible work arrangements would permit women to time their attendance so these breaks would not be necessary.

USCIB: Yes to (1)-(2); no to (3)-(4). (2) If they constitute a reasonable accommodation without an undue hardship on the employer. (4) This would not be a reasonable accommodation.

AFL-CIO: (1) Yes. Employers should permit appropriate breaks of reasonable duration. (2)-(4) To the extent employers count breaks as working time, they should not treat breaks for breastfeeding any less favourably.

Uruguay. National Chamber of Commerce and Chamber of Manufacturers: Yes to (1) and (3)-(4); no to (2). (1)-(2) and (4) If the job permits. If not, social security should compensate any loss of pay due to reduced working hours.

Venezuela. CTV: Yes to (2)-(4). (1) This right should be stipulated in the Convention, labour legislation or, failing that, in the relevant collective agreement. (4) Subject to discussions between the employer and workers.

Viet Nam. (1)-(4) Nursing provisions should be included in the Convention. (4) It depends on the country's situation.

Zimbabwe. ZCTU: Yes to (1)-(4).

Paragraphs (1) and (2):

A strong majority of replies were in favour of including an entitlement to nursing breaks within the Recommendation. Nursing breaks were provided under Article 5 of Convention No. 103 and in Paragraph 3(1) of Recommendation No. 95. Many respondents attributed great importance to nursing breaks, seeing them as essential for the health and well-being of mother and child. A few replies suggested that this provision be included in the Convention. On the other hand, a few replies did not consider the regulation of nursing breaks as a matter that should be addressed in an international convention on labour standards, but rather one that should be left to national law and practice or collective bargaining. Some replies saw this provision as difficult to implement in practice as it was dependent on many factors, including the availability of on-site child-care facilities or the proximity of the mother's place of work to her child's location. In those countries where maternity leave was long enough to cover the average nursing period, this provision was not necessarily seen as relevant.

Some comments queried the meaning of "to nurse", asking whether it applied to breastfeeding only, or whether it could include bottle-feeding, expressing milk for later use, or simply caring for the child. The Office's intention was for that term to apply only to breastfeeding or the expression of breast milk. Otherwise, there would be no compelling reason to limit the right to the mother of the child. The Office further notes that the rationale in support of nursing breaks is the health benefits of breastfeeding for both mother and child.

There was also general support from governments and workers' organizations, as well as from some employers' organizations, for the proposal that nursing breaks be counted as working time and remunerated accordingly. Many replies acknowledged that breaks for nursing mothers are well-established, counted as working time and remunerated in many countries. A number of replies suggested the qualification that breaks should be provided in accordance with national law and practice, including collective agreements. The provisions contained within Questions 26(1) and 26(2) have been combined within *Point 23(1)* of the Proposed Conclusions.

Paragraph (3):

A clear majority of governments, along with most employers' and workers' organizations, supported this provision which has been included as *Point 23(2)* of the Proposed Conclusions. This provision would allow Members to determine the frequency and duration of nursing breaks, while also providing the flexibility to adapt these to particular needs on the basis of a medical certificate.

The Office notes that Article 5(1) of Convention No. 103 specified that the time or times for nursing breaks were to be prescribed by national laws or regulations and Paragraph 3(1) of Recommendation No. 95 provided that adjustments should be permitted on production of a medical certificate. The present provisions (*Point 23(2)*) broadens the means to give effect to this entitlement.

Paragraph (4):

While a majority of replies supported the inclusion of this new provision, support was somewhat less strong than that expressed for in Paragraphs (1)-(3).

Many replies, in particular from a number of governments and employers' organizations, emphasized that such arrangements must be negotiated between employer and employee. A number of workers' organizations objected to the notion that the combination of nursing breaks should be considered as a reduction of working hours. If such were the case, it might result in lower remuneration. They considered that nursing breaks should take place on the employer's time and whenever necessary during the day.

The Office recalls that under *Point 23(1)*, nursing breaks are to be considered as working time. In its view, the thrust of this provision is not meant to regulate working time *per se*, but to provide flexibility for a woman whose child is not within close proximity to her workplace to nurse her child at the beginning or end of the working day. This proposal has been included as *Point 23(3)* of the Proposed Conclusions.

Should provision be made for the establishment of facilities for nursing under adequate hygienic conditions? **Qu. 27**

Total number of replies: 98.

Affirmative: 79. Argentina, Australia, Austria, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Cameroon, Central African Republic, Chad, Chile, China, Colombia, Comoros, Costa Rica, Cyprus, Czech Republic, Ecuador, El Salvador, Ethiopia, Finland, France, Germany, Ghana, Greece, Guyana, Honduras, Hungary, India, Islamic Republic of Iran, Italy, Jamaica, Jordan, Kenya, Republic of Korea, Kuwait, Lithuania, Luxembourg, Mali, Mauritius, Mexico, Republic of Moldova, Morocco, Mozambique, Namibia, Netherlands, Nicaragua, Oman, Pakistan, Papua New Guinea, Philippines, Portugal, Qatar, Romania, Russian Federation, Saudi Arabia, Slovakia, Slovenia, South Africa, Sri Lanka, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United States, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Negative: 9. Bahrain, Croatia, Egypt, Estonia, Latvia, Malaysia, Niger, Peru, San Marino.

Other: 10. Bulgaria, Canada, Congo, Denmark, Japan, Lebanon, New Zealand, Norway, Spain, United Kingdom.

Australia. See Question 26.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Bahrain. Such a facility would have economic impediments and is socially and traditionally unacceptable.

Barbados. This provision could be addressed through the establishment of day-care facilities at or near industrial estates and large office complexes.

Botswana. Consideration should be given to the level of development of a country.

Brazil. Only through collective bargaining and taking into account the size of the firm.

Bulgaria. Bulgarian legislation provides for such in establishments employing 20 or more women.

Cameroon. To encourage breastfeeding, especially for women living far from their worksites.

Canada. This should be a voluntary process and employers should be encouraged, but not compelled, to provide these facilities. Such actions could be a disincentive to hire women.
CLC: Yes.

Central African Republic. Such a provision should take into account the size of each establishment.

Chile. It is necessary to seek the most suitable facilities and examine their potential use by the persons concerned, it being understood that these are public premises.

China. Especially those enterprises which employ a large number of women, as well as communities.

Colombia. Enterprises should provide appropriate facilities, taking into account the number of women workers employed, local customs and collective agreements.

Comoros. As far as possible.

Congo. That depends on the level of economic development of each country.

Croatia. KNSH, SSSH, HUS, MATICA and KHSJSN: Yes.

Czech Republic. UZS ČR: The establishment and operation of such facilities is very difficult, especially care of small babies during the mother's working day. The solution must be left to the possibilities of the individual employers in cooperation with regional social and health bodies.

Denmark. Adequate hygienic conditions must be ensured.

Dominica. CSA: Yes.
DAWU: Yes.
DTU: Yes. Such provisions should be encouraged where practicable and could raise the level of productivity.
WAWU: Yes.

Ecuador. UGTE: Yes. Employers should be responsible for providing such facilities.

Egypt. This should be left to the discretion of the Member concerned, in consultation with employers' and workers' organizations.
Federation of Egyptian Industries: No. This is to be left to the working conditions in the enterprise, as well as to national laws regulating these conditions, in consultation with employers' and workers' organizations.
Egyptian Trade Union Federation: Yes.

Estonia. A country could decide according to its practice and legislation.
Estonian Association of Trade Unions: Yes.

Finland. TT, LTK and Federation of Finnish Enterprises: No.

France. In the public sector, some administrations which are able to provide child-care facilities allow women to nurse their child. It is difficult to impose the establishment of nursing facilities throughout the sector.

CNPF: No.

CFTC: Yes. Difficult in practice in SMEs and in poor countries.

CGT-FO: Yes. By adapting her place and time of work.

Germany. BDA: No. Details of this kind should not be dealt with in the Recommendation.

Ghana. GEA: Yes. Crèche facilities.

TUC: Yes. Crèches and day-care centres should be provided near workplaces.

Indonesia. APINDO: Yes.

Islamic Republic of Iran. The number of employees should be considered.

Iraq. General Federation of Trade Unions: Yes.

Italy. These facilities should be available to all women workers during the first year of a child's life.

Jamaica. JEF: No.

Japan. This matter should be determined by each Member in accordance with that country's actual situation. There should be no such provision in the Recommendation.

NIKKEIREN: Provisions imposing burdens or obligations on employers should not be included. The desirable solution is for individual corporations to make a comprehensive judgment concerning the wide-ranging needs for improving working conditions and their welfare facilities, and then, if costs permit, to move toward the creation of such facilities. As child-care facilities have an important function as social infrastructure, corporations should not be required to assume responsibility for them alone. This provision should not be included in the Recommendation.

JTUC-RENGO: Yes.

Jordan. Amman Chamber of Industry: Yes, in the place allotted for nursing, if the number of employed women in the enterprise justifies the establishment of a day nursery.

Latvia. Question of social dialogue.

Lebanon. When such facilities are established, due consideration should be given to adequate hygienic conditions.

Lithuania. Confederation of Lithuanian Entrepreneurs/Employers: No.

Malaysia. It should be left to the employers, although encouraged.

MEF: No. Should be done on a voluntary basis.

MTUC: Yes.

Mauritius. MEF: No.

Mexico. Employers should be required to establish adequate hygienic facilities.

Morocco. This provision should be included in the Convention.

Namibia. Where practicable and affordable.

NEF: Yes, running water where possible.

NUNW: Yes. If that particular company can afford to have hygienic conditions. Each and every company should establish such facilities.

New Zealand. See 26(1).

NZEF: See 26(1).
NZCTU: Yes.

Nicaragua. As long as the circumstances of the enterprise and the work permit it.

Niger. Economic difficulties could hinder the establishment of such facilities.

Norway. Suitable conditions may involve a staff room which is only used for limited periods, their own work room or other places where they can rest or nurse without being disturbed.

Papua New Guinea. Depending on the employer's capacity to provide such facilities.

Peru. CUT: Yes.

Philippines. National legislation provides for the establishment by the employer of nurseries in the workplace in appropriate cases and storage facilities for expressed milk.

Poland. KPP: Yes. If possible.
OPZZ: Yes.

Portugal. Conditions of implementation should be provided.
CIP: The matter should be left to the legislation of member States.

Qatar. Where there is a sufficient number of infants.

Romania. When nursing breaks are given to mothers during working time, it is necessary to create conditions for the nursing of infants, inside the workplace or nearby.
National Council of Private Small and Medium-sized Enterprises: Yes. Depending on the results of negotiations between employers' and workers' organizations included in a national-level collective agreement.

Slovakia. Adequate hygienic conditions are the primary precondition for nursing.

South Africa. BSA: This is not an appropriate subject for inclusion in a Recommendation. It is a matter which should be left to collective bargaining.

Spain. As long as it is optional for employers or they are given compensation. As long as it would not hinder the employment of women.
CCOO: Yes.

Suriname. ASFA: See Question 26(1).

Syrian Arab Republic. This would be necessary providing the appropriate hygienic requirements are respected and that this be at the expense of the employer, if possible.

Togo. Only applicable in advanced countries.

Trinidad and Tobago. ECA: No.

Tunisia. The responsibility for creating such facilities should be specified, whether the employer, public authorities, or both. Setting up nursing facilities within the enterprise is not advisable, due to the harmful effects of the working environment on the child's health.

Turkey. Only for establishments employing more than a certain number of women.
TISK: Yes. Particularly in large undertakings.

United Kingdom. See 26(1).

United States. At a minimum, privacy should be accorded the nursing mother. Cold storage facilities for the milk are also essential.
USCIB: Yes. If such facilities are provided for other employees.
AFL-CIO: See Question 26(2).

Venezuela. Consideration should be given to the provision of works nursery facilities to allow the mother to return to her work quickly.

CTV: This should be in the Convention, labour legislation and the relevant collective agreement.

Zimbabwe. ZCTU: Yes. That would need to be discussed further at national level.

Most replies were in favour of this provision which streamlines the substance of Paragraphs 3(2) and (3) of Recommendation No. 95. Its underlying purpose is to ensure the health and welfare of mother and child through the establishment of hygienic nursing facilities. The current situation in many countries was reviewed in Report V(1) on *Maternity protection at work,* which concludes that although some facilities are provided, many worksites still lack clean, secure and well-maintained facilities for breast-feeding or milk expression. A number of replies stated that employers should be encouraged to provide such facilities on a voluntary basis, rather than be legally obliged to do so. For some, the establishment of facilities should be dependent on the size of the enterprise or the number of women employed. The cost of providing such facilities was a key issue, given that the ability to provide facilities would depend on the financial means of the employer. The Office notes that the Point as formulated leaves open the question of whether such facilities should be established through public or private means. Other replies affirmed that this was an inappropriate issue for an international instrument on labour standards, and that it was a matter to be determined by collective agreements.

Given the majority support for this proposal, it has been included as *Point 24* of the Proposed Conclusions.

RELATED TYPES OF LEAVE

Should an employed mother or father be entitled to parental leave during a period following the expiry of the maternity leave? **Qu. 28(1)**

Paragraph 1:

Total number of replies: 101.

Affirmative: 70. Argentina, Austria, Barbados, Belarus, Belgium, Botswana, Brazil, Bulgaria, Cameroon, Canada, Central African Republic, Chile, Colombia, Comoros, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Finland, France, Germany, Greece, Guyana, Honduras, Hungary, India, Islamic Republic of Iran, Italy, Jamaica, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lithuania, Luxembourg, Mali, Mauritius, Republic of Moldova, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Papua New Guinea, Poland, Portugal, Qatar, Romania, San Marino, Slovakia, Slovenia, South Africa, Spain, Suriname, Switzerland, Tajikistan, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Venezuela, Viet Nam, Zimbabwe.

Negative: 20. Angola, Australia, Bahrain, Benin, Chad, China, Ghana, Malaysia, Morocco, Mozambique, Namibia, Niger, Oman, Peru, Philippines, Seychelles, Sri Lanka, Syrian Arab Republic, Thailand, Togo.

Other: 11. Congo, Costa Rica, Cuba, Ecuador, El Salvador, Japan, Lebanon, Mexico, Russian Federation, Saudi Arabia, Sweden.

Angola. At the employer's discretion.

Argentina. Only when prescribed by a medical practitioner or in specified exceptional cases.
CGT: Provisions on parental leave should be included in labour legislation and practice.

Australia. Provisions pertaining to parental leave should not be addressed in this standard concerning maternity protection. The Workers with Family Responsibilities Convention, 1981 (No. 156), and Recommendation (No. 165) address this form of leave.
ACTU: Yes. The father should also be able to take the "maternity leave" rather than the mother.

Austria. The Convention should provide for parental leave. This entitlement should also exist in the case of adoption.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Barbados. Especially in cases of children with special needs.

Belgium. It is not necessary for the parental leave to follow immediately after maternity leave.

Benin. There is reason to question the purpose of parental leave.
COSI: Yes.

Botswana. Subject to the level of development of the member States.

Brazil. Only if foreseen in collective agreement.
CNC and CNI: No.
CNF: No. Such leave may impose a motive for discrimination.

Canada. CLC: Should refer to mother, father or partner.

Central African Republic. The length of leave should be limited.

Chile. Only in exceptional circumstances, for instance, if the child is seriously ill.

China. Developing countries generally cannot afford such an entitlement.

Colombia. This possibility could be studied in accordance with the characteristics and circumstances of individual member States.

Congo. This entitlement could be limited to employed men in the days following the delivery by their spouses.

Costa Rica. This provision goes beyond the minimum guarantees for the health of the mother and child and should be left to national legislation in each member State in the light of prevailing economic and social security conditions.

Croatia. Should be regulated by the Convention, not by the Recommendation.

Cuba. National legislation makes no provision for the father's right to parental leave, although additional leave is available for mothers.

Czech Republic. UZS ČR. Yes. A maximum of three years after the birth of the child. The employment relationship should continue for this period.

ČMK OS: Attention should be paid to EU Directive 96/34/EEC concerning the framework agreement concluded on parental leave.

Denmark. DA: Should not be included in the Recommendation.

FTF: Should be included in the Convention.

LO: Should be included in the Convention.

Dominica. CSA: Yes. The father should also receive parental leave during the first week after the confinement of his wife.

DAWU: Yes.

DTU: No. Only by common agreement when absolutely necessary and in the best interest of employer and employee relations.

WAWU: Yes.

Ecuador. If the health or life of the child are endangered for any reason.

CONAMU: Yes.

UGTE: Yes.

Egypt. Only the mother.

Egyptian Trade Union Federation: No. In order to protect women from discrimination in employment.

El Salvador. Only the mother, in special cases and on the recommendation of a physician.

Ethiopia. Should be left to collective agreements between the employer and employee.

Finland. The rights of fathers and adopted children should be considered in both instruments. At the time of childbirth, fathers should have limited leave to care for the mother and child.

Germany. BDA: No. Parental leave should not be dealt with in a Recommendation on maternity protection. This would tend to blur the distinction between maternity leave, given on health-related grounds, and parental leave, given for the purpose of child care and promoting equality of opportunity.

Ghana. NCWD: Yes.

TUC: Yes.

Guyana. If the health of the child so demands.

Honduras. In justifiable cases.

COHEP: No. All relevant cultural and social factors need to be considered before adopting such a measure.

India. Bharatiya Mazdoor Sangh: Yes. The joint family structure is coming to an end and parents face difficulties nursing children below the age of 1 year. Parental leave of up to one year with or without pay may be granted.

National Front of Indian Trade Unions: No. Where the mother is not employed, the father may be granted paternity leave for a period of one week.

Indonesia. APINDO: No.

Iraq. General Federation of Trade Unions: Yes. Only the mother.

Italy. CONFINDUSTRIA: Should be handled through collective bargaining or national legislation.

Japan. It is inappropriate for this to be provided in the new Recommendation. Maternity protection for pregnancy or childbirth applies only to women. It should be distinguished from the care and rearing of children, which can be shared by men and women. Parental leave, which relates to the latter, should be dealt with in the framework of Recommendation No. 165, which contains a similar provision.

JTUC-RENGO: Yes.

Jordan. Only if the leave is taken out of the annual leave.

Amman Chamber of Industry: Yes. Only if the leave is taken out of the annual leave or is unpaid.

Federation of Jordanian Chambers of Commerce: No.

Kenya. Parental leave, especially for a father, should be determined through collective agreements.

Kuwait. For the employed mother only, except in the case of her death.

Lebanon. To be left to each member State to decide. Parental leave raises two questions: whether it is paid or unpaid; and whether the parent would be entitled to the same or similar position upon return.

Malaysia. MAPA: No.

MEF: No.

Mali. In the spirit of Convention No. 156 concerning Workers with Family Responsibilities.

Mauritius. Only in countries whose economy can sustain the grant of such leave.

MEF: Should be left to the parties.

Mexico. Only in special cases, given that many countries' legislation do not provide for this type of leave.

Morocco. We see no need for a specific provision for parental entitlement to post maternity leave.

FCCIS: To be negotiated.

CDT: Yes.

Mozambique. Joint leave should not be granted to father and mother. However, the father could be granted leave if the mother is not strong enough to take care of the child.

Namibia. NUNW: Yes.

Netherlands. In the Netherlands, it is considered important that both the father and the mother are entitled to parental leave. Dutch law also provides for "calamity leave", which may be used in emergency situations, such as the sudden illness of a child.

FNV: Non-transferable parental leave for both parents individually should be provided as in the European Union Directive (96/34/EG). Non-transferable individual parental leave is consistent with the recognition of the need to create effective equality of opportunity and treatment between men and women with family responsibilities as in Convention No. 156.

New Zealand. It is not appropriate to have a prescriptive instrument in relation to this matter.

Nicaragua. Cases should be considered individually.

Oman. There is no reason for the national economy to assume further burdens.

Pakistan. At least mothers and, if possible, fathers should be entitled to parental leave after the expiry of maternity leave to look after their children.

Papua New Guinea. When both parents are required to visit hospital or doctor.

Peru. CUT: Yes. Parental leave rights should be provided in other instruments, but in the meantime they may be considered here.

Portugal. CIP: The possibility of establishing leave for fathers should be left to the legislation of member States, taking into account the diversity of social and cultural values.
UGT: The Recommendation should include parental leave for a period following maternity leave. It should increasingly link workers' professional responsibilities with their family responsibilities.

Qatar. The mother, and in accordance with national laws and regulations.

Romania. Parental leave should be provided through special legislation.

Russian Federation. National law provides for parental leave which may also be taken by other relatives who are in fact caring for the child.

Saudi Arabia. Depending on national legislation.

South Africa. BSA: No.

Spain. This should be incorporated into the Convention or Recommendation, as parental leave is closely linked to maternity protection.

Suriname. ASFA: On a doctor's advice.

Sweden. See General Observations. The Convention should include provisions on parental leave and parental benefits in a separate part.

Togo. None the less, the father should have the right to paternity leave, the length and conditions of which are determined by national law and practice.

Trinidad and Tobago. ECA: Only under extreme circumstances.

Tunisia. As far as the circumstances of the enterprise permit.

Turkey. The leave may be without pay.
TISK: No.

United Kingdom. Such leave should be provided to both parents during the early years of a child's life.

United States. Without an entitlement to pay.

Venezuela. CTV: No.

Zimbabwe. Only on medical grounds related to the mother's or child's welfare and prescribed by a medical doctor or nurse.
ZCTU: When the need arises.

A majority of replies supported this new provision, given the importance attached to enabling workers to reconcile their professional lives and their family responsibilities. Some replies considered the provision of sufficient importance to include it in the Convention, rather than the Recommendation. Others questioned whether an international instrument on maternity protection should deal with this issue, recalling that the Workers with Family Responsibilities Recommendation, 1981 (No. 165), provides for the possibility of such leave. Paragraph 22(1) of Recommendation No. 165 states that: "Either parent should have the possibility, within a period immediately following maternity leave, of obtaining leave of absence (parental leave), without relinquishing employment and with rights resulting from employment being safeguarded."

Several replies considered that parental leave should be determined by national legislation or collective agreements, given that it supplements the minimum standards established in the context of maternity protection. A number noted that the possibility of providing such leave was dependent on the circumstances of individual member States.

A number of replies questioned the scope of this provision, in particular, who would be eligible to take parental leave. Thus, the provision has been reworded to clarify its application to the employed woman or the employed father of the child. It is included as *Point 25(1)* of the Proposed Conclusions.

The Office notes that the inclusion of parental leave provisions marks a departure from the main thrust of the new instruments, which provide maternity protection for employed women with regard to childbearing, rather than childrearing.

Qu. 28(2) *Should the period during which parental leave might be granted, the length of the leave and other modalities, including the payment of parental benefits, the use and distribution of parental leave between the employed parents, be determined by national laws or regulations or in any manner consistent with national practice?*

Total number of replies: 94.

Affirmative: 74. Argentina, Austria, Barbados, Belarus, Belgium, Benin, Botswana, Bulgaria, Cameroon, Central African Republic, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Germany, Greece, Guyana, Honduras, Hungary, India, Islamic Republic of Iran, Italy, Jamaica, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lithuania, Luxembourg, Mali, Mauritius, Mexico, Republic of Moldova, Mozambique, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Papua New Guinea, Philippines, Poland, Portugal, Romania, Russian Federation, San Marino, Slovakia, Slovenia, Spain, Sri Lanka, Suriname, Switzerland, Tajikistan, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Venezuela, Viet Nam, Zimbabwe.

Negative: 14. Australia, Bahrain, Brazil, Chad, China, Comoros, Ghana, Malaysia, Namibia, Oman, Peru, Seychelles, Syrian Arab Republic, Thailand.

Other: 6. Congo, Cuba, El Salvador, Lebanon, Qatar, Saudi Arabia.

Argentina. CGT: National legislation should lay down minimum provisions and collective agreements should deal with the detailed provisions appropriate to different types of work.

Australia. This provision should be covered by Convention No. 156 and Recommendation No. 165.

ACTU: Yes.

Austria. The Recommendation should only lay down the minimum requirements (e.g. minimum duration of parental leave, protection from termination of employment and dismissal, the right of return, social security protection, financial benefits). The requirements and procedures applying to parental leave should, however, be left to member States.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Canada. CEC: Yes.
CLC: Yes.

Central African Republic. Taking into account national realities and the specific characteristics of each branch of activity.

Chile. Such legislation should make clear the possible use of leave by both parents.

Congo. They should be determined by collective agreement.

Croatia. All modalities of use and distribution of parental leave should be regulated by national legislation.

Cuba. National legislation makes no provision for the father's right to parental leave.

Czech Republic. ČMK OS. The Convention or the Recommendation should stipulate only the length of parental leave and leave to national legislation the question of parental allowances.

Dominica. CSA: Yes.
DAWU: In a manner consistent with national practice.
DTU: In a manner consistent with national practice.
WAWU: Yes.

Ecuador. Preferably by legislation.
CONAMU: Yes. In countries where this is not determined by national laws or regulations, the State should be urged to support and promote it.

Egypt. On condition that leave is only granted to the mother and national laws and regulations may determine whether benefits are paid.
Egyptian Trade Union Federation: No.

El Salvador. Subject to the presentation of a medical certificate and determined in accordance with the relevant national legislation.

Ethiopia. National legislation should state that this matter should be handled by collective agreement or in any manner that the two parties agree upon.

Germany. BDA: No. See 28(1).

Ghana. NCWD: Yes. Minimum standards should be set at the international level.
TUC: Yes.

Honduras. COHEP: This should be determined by legislation, after being first established through practice (collective agreement).

India. Bharatiya Mazdoor Sangh: No. The minimum benefits to be extended should be determined in the Recommendation as guidelines to Members.
National Front of Indian Trade Unions: It should be determined by national law to ensure uniform practice.

Islamic Republic of Iran. National regulations should guarantee compliance.

Iraq. General Federation of Trade Unions: Yes. Only the mother.

Italy. CONFINDUSTRIA: Should be handled through collective bargaining or national legislation.

Jordan. Amman Chamber of Industry: Yes. Consider the situation of husband and wife working in the same enterprise.

Japan. JTUC-RENGO: Yes.

Lebanon. National laws should determine the duration of the leave and benefits.

Lithuania. Lithuanian Workers' Union: Yes. Provisions must be contained in national legislation.

Malaysia. MTUC: Not applicable in Malaysia.

Morocco. FCCIS: Yes.
CDT: Yes.

Mozambique. A written law provides greater protection for workers' rights.

Namibia. NEF: Yes.
NUNW: Yes.

Netherlands. FNV: No.

Nicaragua. Also through collective agreement.

Norway. These rights are statutory in Norway.

Pakistan. All parental benefits must be determined through national law and practice.

Peru. Should be left to national law and practice in each member State.
CUT: Yes.

Portugal. By national legislation.
UGT: To be determined by domestic legislation, following consultation between the bodies most representative of workers and employers.

Qatar. Any leave granted to the mother following the expiry of the maternity leave should be determined by national laws or regulations.

Romania. National Council of Private Small and Medium-sized Enterprises: Yes. The instruments adopted by the European Union should also be taken into account.

Russian Federation. The parents or other relatives who take care of child should enjoy all the rights provided by legislation. The minimal (guaranteed) duration of leave to take care of child, as well as amount of the benefit, should be fixed by national legislation.

Saudi Arabia. Depending on national legislation.

Slovakia. Parental leave should be granted in accordance with national legal regulations.

Spain. Provision for this right should be made in either the Convention or the Recommendation.

Togo. If the principle of parental leave is adopted, the conditions for such leave should be determined by national law.

Trinidad and Tobago. ECA: No.

Tunisia. By national legislation.

Turkey. TISK: No. Parental leave following the expiry of maternity leave would be inconsistent with the objective pursued in the Maternity Protection Convention. The Convention aims to provide the necessary environment for ensuring a healthy period of confinement for mother and child and provides only for maternity leave in that context. Provisions in the Recommendation with a view to granting parental leave, for which no provision is made in the legislation of the vast majority of member States, would make the two international instruments inconsistent.

Ukraine. Working parents should be granted the right to determine independently between themselves the use and distribution of the parental leave.

United Kingdom. The EC Parental Leave Directive provides for these issues to be determined by individual member States, subject to a minimum of three months' parental leave for both parents, to be taken before the child is eight.

United States. The minimum time permitted for parental leave should be set forth in national law so as to secure a uniform entitlement applicable for all working citizens. However, the expansion of this minimum time by state and local laws, as well as by the individual employers, should be permitted. In the United States, other jurisdictions often provide more generous parental leave benefits than those addressed at the federal level.

Uruguay. National Chamber of Commerce and Chamber of Manufacturers: Yes.

Venezuela. National legislation and programmes should include relevant provisions.
CTV: No.

Zimbabwe. After consultation with employers' and workers' organizations.

A strong majority of replies supported this further provision on parental leave. Similar issues were raised with regard to duration of leave and entitlement to income replacement as those discussed in the summaries above. Only a few replies urged that the minimum requirements for such leave be included within the instrument itself. Several replies noted Council Directive 96/34/EC concerning the framework agreement on Parental Leave recently adopted by the European Community. Many replies asserted that the modalities of parental leave should be established through national laws and regulations, collective agreements or national practice.

Point 25(2) of the Proposed Conclusions has been drafted in accordance with the majority views.

In case of sickness, hospitalization or death of the mother of a newly born child before the expiry of her postnatal leave, should the employed father of the child be entitled to take leave of a duration equal to the unexpired portion of the postnatal maternity leave? **Qu. 29**

Total number of replies: 99.

Affirmative: 72. Angola, Argentina, Austria, Barbados, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria, Cameroon, Central African Republic, Chad, Chile, China, Colombia, Congo, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Greece, Guyana, Honduras, India, Islamic Republic of Iran, Italy, Jamaica, Jordan, Kenya, Republic of Korea, Kuwait, Latvia, Lithuania, Luxembourg, Mauritius, Republic of Moldova, Mozambique, Morocco, Namibia, New Zealand, Nicaragua, Oman, Pakistan, Papua New Guinea, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, South Africa, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Trinidad and Tobago, Turkey, Ukraine, United Arab Emirates, Uruguay, Venezuela, Viet Nam, Zimbabwe.

Negative: 15. Australia, Bahrain, Comoros, Egypt, Ghana, Lebanon, Malaysia, Netherlands, Peru, Philippines, Russian Federation, Sri Lanka, Thailand, Togo, United States.

Other: 12. Canada, Costa Rica, Cuba, Hungary, Japan, Mexico, Norway, Qatar, Saudi Arabia, Spain, Tunisia, United Kingdom.

Angola. If the father replaces the mother as the caretaker.

Argentina. CGT: Yes. Given that fathers may be required to take over the mother's role.

Australia. If the aim of the Convention is to protect the mother's health, then her partner should use other special leave, such as parental leave or carer's leave, as suggested in Recommendation No. 165.
ACTU: Yes.

Azerbaijan. Azerbaijan Trade Unions Confederation: Yes.

Brazil. CNC and CNI: No. This event should be left to collective bargaining, rather than being regulated by law.
CNF: No.

Canada. While no jurisdiction has provisions at this time to allow the father to take any portion of the maternity leave, the father could receive parental leave in all jurisdictions, except Alberta.
CLC: Yes. Father or partner.

Chile. In the event of less serious sickness, it should be a medical practitioner who is responsible for determining whether a mother's state of health is incompatible with caring for her child.

China. "Sickness" should be restricted to contagious cases or those where patients cannot take care of themselves. Otherwise, all employed fathers would be entitled to take such leave *de facto.*

Congo. To allow him to care for the child. Could be extended to allow an adjustment period with the newborn.

Costa Rica. Given that this provision goes beyond the minimum guarantees for the health of the mother and child, it should be left to national legislation in each member State.

Cuba. Our legislation makes no provision for the father's right to parental leave.

Czech Republic. Yes, and the extension of this right to other persons also.

Denmark. LO: This should be included in the Convention.

Dominica. CSA: Yes.
DAWU: Yes.

DTU: Yes. But only in the case of death should the father be entitled to the remaining portion of the leave with no loss of his rights from his employer.

WAWU: Yes. Or even extended leave.

Ecuador. All of the mother's rights should be transferred to the father in the event of the mother's death during or after childbirth when the child survives; or if the child's life or health is at risk.

CONAMU: In such cases, the father should be entitled to the financial benefits to which the mother was entitled and to any other benefits that may apply.

Egypt. Egyptian Trade Union Federation: Yes.

Ethiopia. The father should be entitled to his normal leave or other types of leave.

Finland. The father's right to take care of the child(ren) should be possible irrespective of the mother's condition.

TT, LTK, Federation of Finnish Enterprises and KT: No. It is sufficient if the father is entitled to parental leave.

France. CNPF: No.

Germany. Such a special provision does not come under maternity leave, but under parental leave.

BDA: No.

DGB: No. Maternity leave is intended to protect the mother's health and therefore should not be granted to the father. Other leave options should be available, e.g. parental leave.

Ghana. NCWD: Extended leave should be allowed for the father or for the mother if the husband dies during that period.

GEA: No. To ensure that the period for maternity is not exceeded.

TUC: Yes. To supervise the care of the child.

Guyana. Not necessarily equal to the unexpired portion. Duration should depend on individual circumstances.

Honduras. In order to care for the child.

COHEP: Leave should be granted, but not on the basis of maternity leave. Individual social conditions need to be considered.

Hungary. Child-care leave may be granted to the father in such instances.

India. HMS: The mother should be invested with the right to choose someone other than the father to care for the child in the event of her sickness, hospitalization or death.

Indonesia. APINDO: No. Maternity leave is for the mother.

Iraq. General Federation of Trade Unions: No.

Italy. CONFINDUSTRIA: Should be handled through collective bargaining or national legislation.

Japan. This should not be included in the new Recommendation. See Question 28(1).

JTUC-RENGO: Yes.

Jordan. Amman Chamber of Industry: Yes. But subject to the enterprise system where the husband works.

Federation of Jordanian Chambers of Commerce: No.

Kenya. However, only if the two parents are working for the same employer. It would be difficult to transfer the benefit to a different employer.

Malaysia. MEF: No. Such leave is personal to the woman employee.
MTUC: Not applicable in Malaysia.

Mauritius. Only in case of the mother's death.

Mexico. Such leave could be granted to the father through collective agreement.

Morocco. FCCIS: To be negotiated.

Mozambique. A father should be entitled to paternity leave in the event of the death of the child's mother during the maternity leave.

Namibia. Provided that the father cares for the child.

New Zealand. There is no need for a specific prescription as to how this additional leave would be granted.

Norway. Under national legislation, the father can take over the unreserved portion of maternity leave not taken by the mother, irrespective of the mother's reason for not taking it. In the cases mentioned, the father may take over the remainder of the allowance period.

Oman. This leave should be undetermined and dealt with on a case-by-case basis through national legislation.

Pakistan. In case of death of the mother.

Papua New Guinea. As long as it is confirmed in national laws and regulations.

Peru. CUT: Yes.

Philippines. Maternity leave is non-transferable.

Portugal. Illness and hospitalization justify different approaches. The maternity leave being broken, it should be resumed after discharge. The father should be entitled to that part of the leave which exceeds the mandatory period to be taken by the mother if both parents agree.
UGT: The Convention must include the right to paternity leave, not only in the cases mentioned, but also by mutual decision of the couple. Apart from the period of physical and mental recuperation from confinement, the remaining period of leave should be taken by the mother or the father on the basis of their joint decision.

Qatar. In such cases, the father should be entitled to an emergency leave that is not related to the maternity leave.

Romania. In special cases, if the newborn's mother is not available, the father should have such a right to leave and to cash benefits.

Russian Federation. Recovery after pregnancy is the main rationale of the postnatal leave. Thus the right for such leave may only cover one person. Nevertheless, in the cases of illness or death of the mother, a right to child-care leave should be granted to another family member.

Saudi Arabia. Depending on national legislation.

South Africa. This is a detail that need not be included in the Recommendation.
BSA: No. Should be left to individual collective bargaining.

Sweden. The same applies to any other close relative, etc., if the father is absent or is incapable of looking after the child.

Togo. Special leave could be granted to the employed father, but not as postnatal leave.

Tunisia. The father could take leave to care for the child, but not as part of his wife's maternity leave. Postnatal leave is provided only to women.

Turkey. TISK: No. Rather than transferring the maternity leave to the father, the Recommendation could include provisions which are not related to maternity leave, but which provide for the healthy development of the child, particularly after the death of the mother.

United Kingdom. Maternity leave is a health and safety measure which is a specific right for mothers and therefore non-transferable. However, the right to parental leave and time off for urgent family reasons could allow the father time off in such circumstances.

United States. The leave should not be limited in this way. The father may not work for a company that provides the same leave benefits as those offered by the mother's employer, or may qualify for an independent entitlement under law.
AFL-CIO: Yes.

Zimbabwe. This should be included in the Convention.

The majority of replies supported inclusion of this new provision within the Recommendation. It was seen as an important guarantee for the care and well-being of the child. Several replies qualified their support by suggesting, for example, the need to clarify the term "sickness"; to limit the entitlement to instances in which the mother dies; to expand the scope of persons entitled to take parental leave; to provide for this right only to a father who actually takes on the role of principal care giver; or to allow the employed father extended leave to which the mother would be entitled. However, no consensus appeared to emerge with respect to any of the suggestions mentioned. A number of replies asserted that this entitlement should be determined by national legislation and regulations or collective bargaining.

A number of governments and employers' organizations reasoned that the purpose of maternity leave was to enable a woman to recover from childbirth and that the right was thus non-transferable. There was, however, still support for an entitlement to a period of leave for the father in the form of parental leave, paternity leave, or emergency leave.

This provision has been included as *Point 26* of the Proposed Conclusions to reflect the majority view.

V. Special problems

(1) Are there any particularities of national law or practice which, in your view, are liable to create difficulties in the practical application of the international instrument(s) as conceived in this questionnaire? **Qu. 30**

(2) If so, how would you suggest that these particularities be met?

Paragraph 1:

Total number of replies: 96.

Affirmative: 39. Algeria, Argentina, Australia, Barbados, Belgium, Benin, Botswana, Canada, Chile, China, Cuba, Cyprus, Ecuador, Egypt, Ethiopia, Ghana, Greece, Kenya, Republic of Korea, Mali, Mauritius, Mexico, Mozambique, New Zealand, Oman, Papua New Guinea, Peru, Philippines, Qatar, Romania, Sri Lanka, Switzerland, Thailand, Togo, Tunisia, Turkey, United States, Venezuela, Viet Nam.

Negative: 48. Angola, Austria, Belarus, Brazil, Bulgaria, Cameroon, Central African Republic, Chad, Colombia, Comoros, Congo, Costa Rica, Croatia, Czech Republic, El Salvador, Estonia, Finland, France, Germany, Guyana, Honduras, Islamic Republic of Iran, Italy, Jamaica, Kuwait, Latvia, Lithuania, Luxembourg, Malaysia, Republic of Moldova, Morocco, Namibia, Pakistan, Portugal, Russian Federation, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Suriname, Syrian Arab Republic, Tajikistan, Trinidad and Tobago, Ukraine, United Arab Emirates, Uruguay.

Other: 9. Denmark, Hungary, India, Japan, Jordan, Lebanon, Netherlands, United Kingdom, Zimbabwe.

Paragraph 2:

Total number of replies: 38. Algeria, Angola, Australia, Belgium, Benin, Botswana, Chile, China, Cyprus, Ecuador, Egypt, El Salvador, Ethiopia, Ghana, Hungary, India, Jordan, Kenya, Republic of Korea, Lebanon, Mali, Mexico, Namibia, New Zealand, Oman, Papua New Guinea, Peru, Portugal, Romania, Sri Lanka, Thailand, Togo, Tunisia, Turkey, United States, Venezuela, Viet Nam, Zimbabwe.

Algeria. Parental leave is not foreseen in national legislation. It should be left to collective bargaining.

Angola. The instruments must be flexible.

Argentina. Our national legislation does not provide for parental leave.

Australia. A prescriptive minimum standard approach to maternity leave would be incompatible with Government policy. The particularity of Australia's social security system may also present a problem. Insurance-based cash benefits are not applicable to Australia. More flexibility is required in the provisions addressing other avenues of benefits, including publicly funded social security as a mainstream source. See comments to earlier questions.
ACTU: No.

Azerbaijan. No.

Barbados. The following areas, considered desirable for inclusion in the Convention, would require changes to current national law and practice: extension of prenatal leave in case of complications; additional employment protection following return to work after expiration of maternity leave; and extension of postnatal leave where a newborn has special needs. Additional leave has implications for labour costs, including potential discrimination against women of childbearing age if employers reduce labour costs by employing males or older women. Current laws do not provide redress for discriminatory legislation. Questions 26, 28 and 29 are desirable features for a Recommendation, but would require cultural adjustments. For Questions 28 and 29, the merits of each case need examination.
BWU: No.

Belgium. If the Convention is too precise regarding (a) extensions of leave for medical reasons being considered as maternity leave, and (b) the types of facilities provided, i.e. for nursing. These provisions should be divided differently between the Convention and the Recommendation.

Benin. In practice, not all employed women are protected in case of maternity, in particular due to the non-coverage of the informal sector. The revision of the texts is important, but the economic situation of the country should be carefully considered. Also, the informal sector should be structured.

COSI: Yes.

Botswana. No provision for parental leave. No provision for social assistance/insurance funds. Revision of the national legislation and regulations to accommodate these particularities, and introduction of a social security scheme would be needed.

Brazil. CNC and CNI: In Brazil, discussions are under way on making industrial rights more flexible, therefore regulations over and above a minimum level should be left to collective bargaining.

Canada. The scope of the Convention is likely to continue to be a problem for Canada, especially with respect to coverage of agricultural workers, some homeworkers, some domestic workers, contract workers, and casual and temporary employees. A provision to the effect that the Convention would apply "in accordance with national law and practice" would enable Canada to ratify this Convention. No jurisdiction provides full salary replacement provisions or an extension of the maternity leave in cases of multiple births or single mothers. Some jurisdictions would currently not be able to comply with provisions regarding nursing breaks and on-site nursing facilities. The cost of medical services (including dental care and midwifery) will be an issue for many countries.

CLC: No.

Chile. Specific standards will be needed to address atypical forms of employment, such as seasonal work, home work, domestic work, subcontracting or in cases where the employer's identity is unclear. The solutions differ because they involve adaptations of labour standards in the light of various atypical forms of employment.

CPC: No.

China. There are no universal criteria concerning maternity-related illnesses. Medical expenses are difficult to control. Laws and regulations governing maternity insurance are difficult to apply. Also, China does not yet have the economic capability to grant parental leave and benefits in addition to maternity leave. Criteria concerning maternity-related illnesses should be formulated as soon as possible. The provision concerning parental leave should be elective so that member States may or may not accept it.

Cuba. With respect to nursing breaks, our laws are based on medical views and on specific circumstances. There is no tradition of a father's right to parental leave, although administrative departments are authorized to evaluate any worker's request for leave on personal grounds.

Cyprus. Medical benefits in Cyprus are means tested and are provided to women whose family income is below a prescribed level, except for certain occupational categories (e.g. civil servants, employees of semi-governmental organizations). This could be met by stipulating that coverage can be satisfied for the purposes of the Convention if a certain percentage of women are entitled to the benefits in question.

Denmark. Some of the provisions are very detailed and that will make it difficult to reach consensus. Refer to the comments on individual questions.

Dominica. DAWU: (1) Party political allegiance and affiliation. (2) The constitution should provide that an independent body deal with such a matter.

DTU: (1) The economic cost, size of enterprises and number of persons employed therein; exploration of scope and new areas for national development; appropriate work ethics; encouragement of mergers and expansion in trade and commerce. (2) Constant review of employment policy and frank and open discussions on method of employment strategy between government, employers and trade unions are needed.

WAWU: (1) The view that only mothers take care of babies. (2) Those concerned should be educated, including children.

Ecuador. Difficulties remain regarding the slow pace of legislative reform. If benefits are increased, women may suffer discrimination. A dialogue with the legislative powers is essential. No other form of pressure is possible.

CONAMU: The State promotes the principle of joint parental responsibility and the protection of heads of households, both of which have been approved as constitutional amendments by the Constituent National Assembly. The new Convention should include definitions and extend the scope of application to "men" and their sons/daughters to implement the principle of joint parental responsibility.

UGTE: (1) Different types of contracts, such as part-time contracts; in-bond industry regulations; lack of security of women employed in domestic service. (2) Legislating to ensure that all employment contracts provide real legal security, and guaranteeing the enjoyment of other collective labour rights to ensure respect for the individual rights of women workers.

Egypt. Particularities could be met by crediting parental leave to the mother only, and specifying that the term "woman" means the married woman, whose marriage had been officially registered and legally recognized, and the term "child" means the legitimate child born of a legal marriage.

Egyptian Trade Union Federation: Retaining the current definitions of "woman" and "child", and providing parental leave may create difficulties, given that Egyptian legislation, regulations and practice make no such provision.

El Salvador. These benefits are established by national legislation respecting social security institutions, but there is a problem in extending benefits to other persons covered by State institutions. Clear legislation should be drafted to provide effective application of these international instruments to resolve legal difficulties.

Ethiopia. Most maternity-related issues are economic issues. Employers may not implement them and employment opportunities for women may be reduced. Labour consultancy and educational programmes should be provided to both social partners. Professional advice on collective bargaining negotiations could also resolve the mentioned difficulties.

CETU: No.

Finland. TT, LTK and Federation of Finnish Enterprises: National provisions and practices vary so much that, on the whole, a Convention is not a suitable instrument.

France. CNPF: Aim for a minimum of protection. Do not try to align the Convention with the optimal level of protection provided in particular national legislation. Do not try to target all particular cases. The questionnaire does not distinguish sufficiently between the minimum protection which can be provided through national legislation and that which can be determined through collective bargaining.

CFDT: The system of social protection may leave aside those who have lost their jobs as well as the long-term unemployed. Put in place a system of universal social protection.

Germany. BDA: The distinction between a woman employee's sickness and complications relating to pregnancy is not made sufficiently clear in the Convention and Recommendation.

Ghana. Currently, Ghanaian law does not provide for parental leave or for the father to use the unexpired portion of postnatal leave. It will be difficult to implement.

NCWD: Laws are not strictly adhered to in the private and informal sectors. Monitoring is required and appropriate fines instituted. Also rewards for compliance are needed to induce and promote compliance, e.g. tax shelters.

GEA: (1) Absence of a national insurance scheme and public funds to assist pregnant women. (2) The nation must create a national insurance scheme and publicly funded assistance to be able to ratify and implement this Convention.

TUC: Paternal leave will be difficult to implement due to the practice of polygamy in Africa.

Greece. Problems could arise if new provisions conflict with national measures taken to conform with EU Directive 92/85/EEC, given the difficulties encountered during the consultation with the social partners and those responsible for social security.

Honduras. COHEP: Leave for men under such circumstances is not part of our tradition. Awareness-raising and education are needed.

Hungary. The development of employment and social policies is subject to present economic necessities. Social policy must be harmonized with economic policy, which must be defined in view of the international commitments of the country. The present Convention and Recommendation alone cannot resolve these problems.

India. Coverage of maternity protection in different sectors of the economy should be made flexible so as to enable national governments to extend the coverage in a phased manner.

Bharatiya Mazdoor Sangh: Implementation in every establishment is difficult. Every pregnant employee must inform the authorities about whether she received her benefits; every employer must inform the authorities about benefits distribution.

HMS: In India, maternity leave is given to women who have worked for 80 days and in establishments that employ more then ten employees. Employers employ only a few workers to avoid paying maternity benefits. Restrictions must be removed to make maternity leave available to all women employees. Employers should be given a more severe punishment for violations.

INTUC: A separate clause for developing countries should ensure enforcement by law.

National Front of Indian Trade Unions: New national legislation will have to be passed after discussion with employers' and workers' organizations.

Indonesia. APINDO: Responsibility for day care: Cash benefits as a substitute for medical benefit.

Iraq. General Federation of Trade Unions: No.

Japan. It is not a problem unique to Japan, but the Convention and the Recommendation should both be sufficiently flexible so that they can be applied while considering the actual situation in each country.

Jordan. Difficulties might arise, but each case is ruled by special conditions and circumstances. These should be resolved through agreement between the employed woman and the employer.

General Federation of Jordanian Trade Unions: No.

Kenya. The maternity leave period is long and most national laws do not provide for paternity leave. The instrument(s) should be made very flexible.

Republic of Korea. In the Republic of Korea, the maternity leave is shorter than 12 weeks and only employers are burdened with the expenses. Tripartite agreements should be reached and relevant national laws and regulations amended to conform to international standards. A continuous effort to reach a labour-management agreement on the possible amendment of labour laws will be made. The Government is reviewing the possibility of cost-sharing by the social insurance system, such as health insurance or employment insurance.

Lebanon. (1) Proposed duration of maternity leave will be a problem. In Lebanese law, leave does not exceed ten weeks, inclusive of confinement. Lebanese law does not provide for certain proposals. The proposal to allow member States to exclude limited categories of employed women or enterprises, where application to them would raise special problems of a "substantial nature", is problematic because this term may mean different things in different countries. Establishment of appropriate facilities, such as nurseries, and new benefits provided depend upon an individual State's ability to secure same. (2) Revision of applicable Lebanese legislation and consideration of the financial implications of measures on government and institutions. Studies will be required by government departments and production sectors on social and financial aspects. New maternity leave formula enabling a majority of States to ratify the instruments, unless failure to ratify relates to other substantial considerations. Convention No. 103 was not widely ratified because of the obligations it imposed. Such difficulties should be avoided for the new instruments. Reference to the relationship between Convention No. 103 and the new Convention should be made in the preamble.

Lithuania. Centre of Lithuanian Trade Unions: Length of leave, amount of payment.

Malaysia. Not as long as the provisions of the proposed Convention are flexible.

MAPA: The international instrument is overly generous in relation to current law or practice, and fails to consider the economic level of development and social peculiarities of each State. The Convention should not be too restrictive.

Mali. (1) The state of development of our health system and the level of benefits available through social security. (2) Provide for a gradual application of the Convention.

Mauritius. Parental leave is not prescribed and the state of the country's economy does not allow for the adoption of such leave.

MEF: (1) Current national legislation does not stipulate a time period for nursing an unweaned child. (2) Specify a time limit for nursing.

Mexico. (1) During maternity leave, the working mother obtains a cash benefit equivalent to 100 per cent of her salary. In case of extension, the subsequent leave is considered to be sick leave and the cash benefit amounts to only 60 per cent of the worker's salary. Mexican legislation makes no provision for any type of paternity leave. Provisions are only made for parents to take sick leave. Any type of parental leave is determined through collective bargaining. (2) The Recommendation should provide for the possibility of a reduced benefit, in accordance with national legislation.

Morocco. Inclusion of other categories of women workers, such as those in the informal sector and self-employed women, may create some difficulties. This problem is likely to arise mainly in countries that have social protection systems covering only those employees who work in the formal sector on the basis of legally defined employment contracts. To enable such countries to ratify the Convention, provide for the possibility of excluding categories of workers not covered by their national legislation.

FCCIS: Take into account the particular characteristics of sectors.

CDT: (1) The opposition and the behaviour of employers in SMEs; weakness in labour inspection. (2) Reinforce labour inspection. Encourage enterprises to respect labour legislation, especially with regard to the rights of women workers. Encourage the establishment of child-care centres. Encourage the training of female labour inspectors responsible for ensuring that the rights of women at work are respected.

Mozambique. The material and financial conditions to apply the Convention do not exist in our country. Differences in the periods of maternity leave.

Namibia. Maternity benefits should not include medical benefits. Cash benefits should be paid to women who qualify and contribute. The latter should be provided under another scheme.

NUNW: (1) The issue of maternity leave under social funds, when benefits lapse because of lack of contributions. (2) The Government should ensure benefits are covered during the period of maternity leave.

Netherlands. See Question 16(2).

New Zealand. (1) There is no compulsory contributory social insurance scheme in New Zealand, and the universal coverage provided is taxation-funded social security benefits that are means tested. (2) Developing instruments that provide general guidance and principles, rather than imposing specific technical requirements, would allow the maximum number of countries to abide by the intent of the instrument, while retaining the flexibility for national law and practice to determine the details of application of the principles. Any standard must accommodate the diverse circumstances of member States.

NZEF: The apparent insistence on the need for a compulsory, contributory social insurance scheme is problematic. Benefits of parental leave should be available to all eligible employees, regardless of the enterprise size or any other possible inhibiting factor. Income maintenance is available from general taxation for any employees for whom this may be necessary.

NZCTU: The New Zealand Government's preference for taxpayer-funded social security benefits that are means tested simply does not deliver the financial security envisaged by the proposed Convention.

Oman. The trend towards longer leave conflicts with the interests of employers, as this negatively affects productivity. This may be settled through national legislation, but the circumstances of each case must be examined separately.

Papua New Guinea. (1) Adequate medical cover for all working women; government support in superannuation for working women. (2) Compulsory medicare or superannuation for working women.

Peru. Current Peruvian labour legislation covering the private sector does not provide for a nursing period, nor does it regulate parental leave. These can be addressed through a thorough interpretation of legislation in force. National legislation allows the combination of prenatal and postnatal leave with any remaining annual leave to enable the woman to take up to 120 days of leave following childbirth. This is the period during which nursing is of great importance.

CUT: First, the current period of employment protection of 90 days before and 90 days after childbirth is inappropriate. To discourage dismissal, the period of protection should cover the full nine months of pregnancy and not less than six months following childbirth. Second, it is difficult for workers to prove that dismissal was due to pregnancy.

Philippines. It may be difficult to comply with the 12-week leave period provided in the Convention. Existing law provides a shorter duration. Proposals to extend maternity leave have had to be examined vis-à-vis the issue of more protective measures for women and the consequent reluctance of employers to hire women. A balance should be achieved as the State tries to ensure the safety and health of women workers in the workplace. If this means added costs beyond tolerable limits for the employer, the consequence would probably be reluctance to hire women.

Poland. OPZZ: No.

Portugal. Under Portuguese law, there is no difficulty in implementing the Convention as suggested in the questionnaire. The obligation to periodically examine the possibility of increasing the duration of maternity leave may create unwarranted expectations and constitute a source of conflict. That provision should be shifted to the Recommendation.

CIP: Possible difficulties in the application of an international instrument in this area relate to the need for flexibility demanded by enterprises and harmonizing this with social aspects which transcend the aims and objectives of enterprises.

UGT: There is no legal requirement for employers to create onsite nursing facilities. Despite some collective agreements, there is no provision for feeding in general, only breastfeeding. The extension of maternity/paternity leave to single mothers is not yet included in our legislation.

Qatar. The instrument applies to cases of childbirth outside marriage; to unmarried mothers; and entitles fathers to parental leave.

Romania. National legislation is still subject to proposed improvements and harmonization within the association agreement concluded between Romania and the European Union. Practical application of national legislation or international instruments is still deficient, due to the lack of an efficient system for distributing information on women's rights to maternity benefits. Anticipated social insurance and health insurance systems will ensure the legal framework of a partnership between the insured party, who will be fully informed of her rights via the insurance contract, and the bodies that manage the funds.

National Council of Private Small and Medium-sized Enterprises: No.

South Africa. BSA: The particular problems of SMEs, the position of key staff, and the need to create jobs. If rules and regulations make it too onerous and expensive to employ women of childbearing age, they might be sidelined. Enterprises might mechanize sooner than would otherwise be the case.

Spain. CCOO: Yes.

Sri Lanka. Maternity benefits are determined by the national law, which does not cover workers in some sectors. Some provisions of the Convention have not been incorporated into national law. These particularities might be met by amending the national laws according to the provisions of the Convention and excluding some sectors of the economy in ratification of the Convention.

Switzerland. Switzerland is currently unable to ratify Convention No. 103. A draft law regarding maternity insurance is currently being examined in Parliament.

Thailand. (1) National law and practice have imposed limitations to maternity benefits. During times of economic crisis, additional protection, if any, would have negative employment implications for employed women. (2) The benefits would be provided in the social security system and contributions allocated by employer and employees, on a voluntary basis in a proper proportion.

Togo. National law and practice would have to be adapted to the provisions of the instruments.

Tunisia. (1) National legislation only grants benefits to married women and children born within marriage. Maternity leave in Tunisia is less than 12 weeks, but varies considerably between the public and private sectors. In the private sector, after the first 15-day extension, subsequent extension periods are considered sick leave. Tunisian legislation provides mothers only with leave to care for an infant. (2) By taking into account the specific characteristics of different societies, such as Muslim societies. Consider the social security systems of developing countries, which have difficulty granting cash benefits equal to two-thirds of income for 12 weeks.

Turkey. (1) Any leave with pay beyond the prescribed period of maternity. Employment protection. (2) By a more flexible wording of the text.

TÜRK-IŞ: There are deficiencies with respect to the rights of the father of the newborn child. When the number of workers is specified for supplying nursing facilities, the total number of workers, rather than the number of women workers, should be taken into consideration.

United Kingdom. The maternity protection measures must be compatible with European Community law in this area, with European equal treatment legislation and with sex discrimination legislation in the United Kingdom.

United States. (1) Some of the rights contemplated in the proposed instruments go beyond the scope of current national laws. The United States has laws designed to protect individual choice in the areas of maternity and sick leave, as well as protecting pregnant employees who desire or need maternity leave. In the United States, issues involving maternity leave are addressed by the equal employment opportunity laws and the Family and Medical Leave Act. With regard to pregnancy or disability, the basic principle of the EEO laws is that an employer may not discriminate against employees or applicants for employment on either of these two bases. Women affected by pregnancy, childbirth or related conditions must be treated the same as (not better than) other employees or applicants on the basis of their ability or inability to work. An employer is not required to provide a minimum level of medical or cash benefits, but is required to treat an employee who is temporarily unable to perform the essential functions of her job because of pregnancy or pregnancy-related medical conditions in the same manner as it treats other temporarily disabled employees. This can be done by providing the pregnant employee with modified tasks, alternative assignments, disability leave, leave without pay, etc. Although not required by law, an employer may provide benefits more favourable to women with pregnancy-related conditions than to employees with other temporary medical conditions. The United States' social security system does not provide coverage of maternity benefit. Finally, in the United States, any employment policy that excludes pregnant women or women of child-bearing age from jobs that may be hazardous to unborn children constitutes unlawful discrimination on the basis of sex. Such a policy can only be defended if the employer can show that being a male or non-fertile female is a bona fide occupational qualification for that particular job. (2) The United States could not adopt the international instrument(s) as worded. The language needs to be revised to provide a greater respect for individual rights and free choice.

USCIB: National legislation significantly addresses employment discrimination, individual choice and protection of privacy rights, but places less emphasis upon the provision of paid benefits and limitation of the circumstances under which a woman can work. These are not peculiarities, but rather a different philosophy in which individuals have a right to choose and to control their working lives.

AFL-CIO: There is currently no federal system in the United States that provides compensation and benefits during periods of maternity leave. Federal legislation prescribing a financing mechanism or source should be enacted.

Venezuela. (1) The Labour Code; the Social Security Code; the Act concerning discrimination against women; and the National Programme for Women. (2) By reporting on measures adopted by Venezuela with regard to Convention No. 103 and the associated Recommendation.

CTV: No.

Viet Nam. (1) Maternity benefits provided through the national social insurance system only cover 10 per cent of employees. There are no comprehensive policies to protect women's employment when their jobs are prohibited due to health and safety considerations. (2) Finding effective methods to encourage women (especially women in rural areas and in small enterprises) to take part in social insurance system. Improving working conditions for all and increasing safe jobs for women.

Zimbabwe. (1) Proving that women are discriminated against, especially in cases where all other matters have been handled procedurally, is difficult. (2) Paternity leave should be provided, thus women and men should be on equal or similar grounds.

ZCTU: (1) Question 27. Nursing facilities may not be used much in Zimbabwe because we do not travel with babies up to the age of 6 months on public transport. (2) Facilities can be provided for older children aged from 1 to 2 years. From 3 to 12 months, transport should be provided if the baby is to be brought to the work premises.

Paragraphs (1) and (2):

Several governments, employers' organizations and workers' organizations identified a number of potential hurdles to the effective implementation of the instruments proposed. Many of these were associated with the need to change national law and policy to make them compatible with the provisions of the international instruments — some might require reform of national institutions such as social security and health care systems. A number of replies referred to limitations linked to the varying levels of development and economic capacity of Members. Other specific problems raised in the replies to this question have already been dealt with in the commentaries to the preceding questions and in the corresponding points in the Proposed Conclusions.

To overcome these problems, several proposals were put forward, such as: revising national legislation, regulations and policy to conform with the new instruments; establishing or revising social security schemes to provide maternity benefits to women leaving certain issues such as those pertaining to parental leave, to be decided pursuant to national law and regulations or through collective bargaining; drafting a flexible instrument, which would permit special circumstances, such as those based upon moral, social and religious grounds, to be accommodated within national systems; distributing provisions of the Convention and Recommendation in a different manner; taking greater account of the economic circumstances of each Member; and providing for periodic reviews and ongoing dialogue among all social partners as well as education.

Qu. 31 *[Federal States only] Do you consider that, in the event of the instrument(s) being adopted, the subject-matter would be appropriate for federal action, or wholly or in part for action by the constituent units of the federation?*

Total number of replies: 13. Argentina, Australia, Austria, Belgium, Brazil, Canada, India, Pakistan, Russian Federation, Switzerland, United Arab Emirates, United States, Venezuela.

Argentina. CGT: In the case of Argentina, labour law regarding the private sector is delegated by the provinces to the national authorities; in the public sector, the individual provinces are responsible for passing their own legislation.

Australia. For Australia, the subject-matter is for implementation by both the federal and constituent state and territory governments.

ACTU: A national standard should be implemented at federal and state levels.

Austria. Measures by the Federation and the individual states are required.

Belgium. Federal authorities as long as the texts do not evoke the precise manner in which the medical care of children is provided.

Brazil. According to the Brazilian Constitution, this pertains to the federal authorities.

Canada. Both apply, given that benefits are federal whilst leave is governed under provincial jurisdiction.

India. Action is required to be taken by both the Central and Provincial Governments.
Bharatiya Mazdoor Sangh: The subject-matter would be appropriate for federal action.
National Front of Indian Trade Unions: By federal action.

Pakistan. In the event of ratification of the Convention, the subject-matter would be appropriate for federal as well as provincial action.

Russian Federation. At the federal level, it is necessary to establish general rules regulating maternity leave, minimum benefits, and medical aid available at pre- and postnatal stages.

Switzerland. Maternity insurance legislation is handled at the federal level; social assistance is handled at the cantonal level.

United Arab Emirates. It is for federal action.

United States. Under the Constitution of the United States, ratification of ILO Conventions is a federal matter. However, the states have the right to make laws dealing with the subject-matter contained in the proposed instrument(s), as long as they do not conflict with already established federal laws.
USCIB: Issues of privacy are torts that are subject to state law.

Venezuela. Wholly, because the laws in question are framework, special and national laws.

According to the replies, in most cases, action will be required at both federal and cantonal, provincial, or state levels, as the case may be, to implement the provisions of the Convention and Recommendation. This will depend upon the constitutional structure of each member State, and therefore the division of powers and responsibility will vary accordingly.

Are there, in your view, any other pertinent problems not covered by the present questionnaire which ought to be taken into consideration when the instrument(s) are being drafted? If so, please specify. **Qu. 32**

Total number of replies: 52.

Affirmative: 9. Australia, Benin, Brazil, Chile Costa Rica, Croatia, Hungary, Philippines, Zimbabwe.

Negative: 22. Argentina, Botswana, Cuba, Egypt, El Salvador, Japan, Kenya, Lithuania, Luxembourg, Malaysia, Netherlands, Pakistan, Peru, Russian Federation, Spain, Sri Lanka, Thailand, Togo, Trinidad and Tobago, Tunisia, Ukraine, United States.

Other: 21. Austria, Belgium, Canada, China, Congo, Denmark, Ecuador, Finland, Germany, Greece, India, Lebanon, Mauritius, Namibia, Romania, San Marino, Slovakia, South Africa, Syrian Arab Republic, Turkey, Venezuela.

Argentina. CGT: No.

Australia. The following are important issues to consider when designing the new instruments:

(i) the preamble should explain the major aims of the standards;

(ii) the questionnaire focused on insurance-based cash benefits, whereas other systems of providing benefits, such as employer-funded maternity leave, should be given recognition;

(iii) the question of adopted children should be clarified. If the aim is to protect the health of pregnant women and new mothers, then a woman who has adopted a child would not be eligible, as she would not face the same health risks and physical conditions of a woman who has given birth. Australia believes adoption would be more appropriately addressed by the Workers with Family Responsibilities Convention, 1981 (No. 156); and

(iv) the issue of prior service as an eligibility requirement is not addressed.

ACTU: Where a pregnancy terminates other than by the birth of a living child, benefits, including leave, should be made available to the mother as required.

Austria. Article 5 of Convention No. 103 (nursing breaks) should be maintained in the text. The Convention should also cover health protection and parental leave. Paragraph 4(1) of Recommendation No. 95 (protection from dismissal) should also be contained in the new Recommendation. The ban on night work and overtime, as well as work on Sundays and public holidays, should be explicitly mentioned in the Recommendation.

BAK: Protective measures in the case of probationary contracts and limited duration contracts; minimum standards for non-standard employment situations, such as work that is low-paid, part-time or involves provision of services.

Belgium. The question of miscarriages might usefully be addressed in the Recommendation.

Benin. Maternity protection in the event of closely spaced pregnancies.

Brazil. The instruments should contain some provision for cases of adoption.

CNC and CNI: No

Canada. Leave for adoptive parents; employer-sponsored supplemental plans sanctioned by the national plans; access to maternity leave and benefits for women in non-standard employment.

CLC: Related family care leave/parental leave; additional special leave for parents with dependents with special needs or disabilities.

Chile. Child-care systems: determine the State's primary or secondary role and that of social security schemes; emphasize the State's responsibility in this field; and explicitly address issues of job flexibility (inter alia, part-time work, homework, telework).

China. There should be no provisions that stipulate (a) who is responsible for paying contributions to maternity insurance for a domestic woman worker; (b) who is responsible for paying contributions for a part-time woman worker employed by two or more families; and (c) whether a part-time male worker should pay contributions.

Congo. The Convention should allow a woman who delivers a stillborn child to benefit from her postnatal leave.

Colombia. CGTD: Fixed-term contracts are prejudicial to women workers, when the employer does not wish to renew the contract. The proposed Convention and Recommendation should establish standards prohibiting dismissal of women workers during a period of time of not less than six months after completion of maternity leave.

Costa Rica. The question of sanctions for employers who violate employment protection measures, and the provision for maternity leave to women workers who adopt a child should be addressed.

Croatia. The revision contains only minor changes, some representing a reduction in rights, which is not in accordance with the ILO Constitution. A new Convention is needed, but it has to be drafted differently.

KNSH, SSSH, HUS, MATICA and KHSJSN: The instruments should include a provision on supervision of the implementation of the Convention through national laws and regulations. The Recommendation should include provisions about the right of mothers to receive information regarding child care and free medical counselling.

Czech Republic. UZS ČR: Maternity protection should also be provided for unemployed women and women immigrants.

Dominica. DAWU: No.

DTU: No.

WAWU: The stress and depressive state that women go through before and after delivery.

Ecuador. Psychological factors, including the stress that can result from certain forms of activity for the prospective mother; the risks of women in the police force; the problems encountered by women engaged in chemical and biological processing.

UGTE: The situation of the newborn, i.e. the setting up of compulsory crèches at or near workplaces, to be managed by suitably qualified individuals.

Estonia. Estonian Association of Trade Unions: The Convention should prohibit discrimination in employment.

Ethiopia. CETU: No.

Finland. In order to achieve more equal opportunities for women and men in the world of work, fathers' greater participation in the caretaking responsibilities needs to be facilitated. The updated list of risk factors (Question 25) should be taken into account when improving health and safety in all workplaces where men and/or women of fertile age work. Expert help for risk assessment should be available.

France. CNPF: No.

CFDT: Travel between home and work: solutions might include a reduction in working time; an increase in maternity leave; a transfer, when possible, to a worksite closer to the home; career advancement and access to any professional training after her return to work.

CFTC: The question of child care after the postnatal and parental leaves and of maternity wages.

Germany. Minimum standards regarding prohibition of night work, work on Sundays and overtime.

BDA: No.

DAG: Individual prohibition of employment in particular cases in accordance with a doctor's certificate.

Ghana. NCWD: Modalities should be set for contribution to health insurance in the informal sector or portion of tax paid used to cover health insurance.

Greece. The questionnaire was satisfactory and clear. Comments regarding point 24(c) require special attention.

Hungary. Services providing information on legal protection or various aid options operated and maintained by the civilian sector may be useful. State assistance for services of this kind may be a goal that could be included in the Recommendation. It would be most useful if provisions and entitlements could be used by the woman in accordance with her own individual preferences.

India. The prohibition of night work should be considered for inclusion. The distribution of prenatal and postnatal leave should be made flexible to facilitate nursing the child and the health of the mother. Maternity benefits may also be allowed to all women in the unorganized sector. In order to achieve wider ratification of the Convention, the provisions should be made flexible to enable national governments to provide for maternity protection in a phased manner in different sectors, especially with respect to social security benefits.

Bharatiya Mazdoor Sangh: Facilities should not be extended in case of abortion. The period and mode of paternity leave and termination of service from the date of confinement up to one year should be invalid if the mother was on leave, whether paid or not.

Centre of Indian Trade Unions: Maternity benefits should be paid in cash to women by the government administration in the unorganized sector, home-based workers and domestic workers.

National Front of Indian Trade Unions: Maternity protection should be extended for two children only. More emphasis should be given to the unorganized sector.

Iraq. General Federation of Trade Unions: The proposed instrument will only provide protection for those working in the formal sector, while the larger proportion of women, those working in the informal sector, will remain unprotected. This instrument will not alter the degree of protection already achieved.

Jamaica. JEF: The need to limit births and to practise family planning.

Japan. JTUC-RENGO: Abortion and miscarriage should be taken into consideration.

Jordan. General Federation of Jordanian Trade Unions: No.

Lebanon. The Recommendation should prohibit women from working overtime during pregnancy and for a period of time to be determined by national authorities after the expiry of maternity leave. It should provide for postnatal parental leave for periods to be determined by national authorities. It should prohibit the dismissal of a woman from her work during medically certified illness arising from pregnancy.

Lithuania. Confederation of Lithuanian Entrepreneurs/Employers: Protection of mother and child in the family.

Mauritius. Emphasize maternal and child health. Employers should be encouraged to promote this.

Namibia. Include stillbirths and miscarriages. Exclude abortions from any maternity benefits.

NEF: Complications of childbirth that may result in loss of income following extended maternity leave, especially in the case of single mothers, where there is no other source of income. Compel the State through other means to take care of the exceptional needs of single mothers, e.g. infant feeding programmes.

Netherlands. FNV: A revised Convention and a revised Recommendation should progressively extend the provisions of Convention Nos. 3 and 103 and of Recommendation No. 95. Given the fact that the questionnaire addresses several provisions of Convention No. 103 only in the part dealing with the Recommendation, the FNV fears regression. See Questions 9(1), 15(1), 19, 20, 25 and 26. For other pertinent problems which ought to be taken into consideration when the instrument(s) are being drafted, see Questions 8, 12(1), 16(1), 19, 22(1)-(2) and 28.

Norway. Confederation of Trade Unions in Norway (LO): Relevant parts of the Convention should be given effect in connection with adoption.

Pakistan. The present questionnaire covers almost all existing problems relating to maternity protection.

Peru. CUT: The non-discrimination provisions should include not only age, race, nationality, religion and marital status, but also any social or cultural condition that in a specific society becomes an impediment to achieving material equality. Limited exceptions to the scope should be based on the type of work performed, not on the category of enterprise. Adequate protection should be assured for workers with family responsibilities, either in this or in another international document.

Philippines. Miscarriages and legal abortion need to be taken into consideration.

Portugal. CIP: There are no other problems.

UGT: The change in the location of some provisions implies regression with regard to what has already been established. Only a transfer from the Recommendation to the Convention would be accepted, not the other way round. Issues are presented which have already been settled. Revision implies that these issues may be altered. Lastly, recognition of paternity leave and rules restricting or prohibiting work hazardous to the health of mother and child should be included in the text of the Convention.

Romania. Free preventive medical examinations, carried out annually at the workplace for women of child-bearing age; ensuring access to professional training missed while on maternity leave; prohibition for pregnant women or those caring for a young child to be required to travel to a place of work outside their place of residence or to be transferred.

CSDR: No.

San Marino. Possibility for one of the parents to transfer from full-time to part-time employment up to the child's third birthday. Leave and benefits in respect of childbirth must be extended to the parents of adopted or foster children.

Slovakia. The protection of pregnant women and mothers from being sent on business trips.

South Africa. Provision for foster mothers of newborn babies as well as adoptive mothers.

Spain. CIG: Yes, adoption of children as well as eliminating gender-based differences in social security contributions paid by employers.

Syrian Arab Republic. Mothers should obtain leave when their child is sick. The employment of pregnant women in night shifts.

Trinidad and Tobago. ECA: Culture and customs of individual countries should be allowed to influence national practice.

Turkey. Total nursing period on daily nursing basis has not been specified.

TÜRK-IŞ: No.

United States. USCIB: None.

Venezuela. Consideration should be given to certain conceptual and legal distinctions that exist in each country.

CTV: It is vital that employers provide guarantees of the mother's employment during pregnancy and after the birth, and to ensure compliance with legislation and collective agreements in this regard.

Zimbabwe. Paternity leave should be given as much coverage as possible. Both sexes should be given similar rights on maternity/paternity.

A majority of governments replying to this question felt that all pertinent issues had been addressed. The importance of drafting a flexible instrument had been mentioned in all the replies to the questionnaire — and was reiterated in a few replies to this particular question. Flexibility was considered necessary to achieve agreement on the minimum standards of the Convention, given the great differences in national law and practice and the cultural differences among member States. Some comments identified a number of provisions that should be carried over from Convention No. 103 and Recommendation No. 95, such as those pertaining to nursing breaks, night work and overtime. Additional issues mentioned as pertinent within the new instruments included: provisions concerning parental leave; protection for women in the informal sector; provisions for women in non-standard employment and on fixed-term contracts; the possibility for transfer from full-time to part-time employment; special leave for parents with dependants with special needs or disabilities; stillbirths, miscarriage and abortion; leave and benefits for adoptive parents; provision of information on child care and free medical counselling; the exceptional needs of single mothers; sanctions against employers that may violate provisions prohibiting termination of employment of pregnant women; and reconciling potential difficulties for nursing mothers who need to travel back and forth from work to nurse their child.

PROPOSED CONCLUSIONS

The following Proposed Conclusions have been prepared on the basis of the replies summarized and commented upon in this report. They have been drafted in the usual form and are intended to serve as a basis for discussion by the International Labour Conference of the fifth item on the agenda of the 87th Session (1999).

A. Form of the instruments

1. The International Labour Conference should adopt international standards revising the Maternity Protection Convention (Revised), 1952.

2. These standards should take the form of a Convention supplemented by a Recommendation.

B. Proposed Conclusions with a view to a Convention and a Recommendation

PREAMBLE

3. The Preamble should note the need to revise the Maternity Protection Convention (Revised), 1952 and the Maternity Protection Recommendation, 1952, to take account of significant economic and social developments in member States as well as the improvements of the protection of maternity in national law and practice.

4. The Preamble should also recall that many international labour Conventions and Recommendations include provisions concerning maternity protection.

C. Proposed Conclusions with a view to a Convention

CONTENT OF THE PROPOSED CONVENTION

Definition

5. For the purposes of the Convention, the term "woman" should apply to any female person, whether married or unmarried, and the term "child" should apply to any child whether born of marriage or not.

Scope

6. (1) The Convention should apply to all employed women.

(2) However, a Member might, after consulting the representative organizations of employers and workers concerned, exclude wholly or partly from the scope of the Convention limited categories of workers or of enterprises when its application to them would raise special problems of a substantial nature.

(3) A Member which avails itself of the possibilities afforded in the preceding paragraph should, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organization, list the categories of workers or of enterprises thus excluded and the reasons for their exclusion. In its subsequent reports, the Member should describe the measures taken with a view to progressively extending the provisions of the Convention to these categories.

Leave

7. (1) A woman to whom the Convention applies should, on production of a medical certificate stating the presumed date of her confinement, be entitled to a period of maternity leave of not less than 12 weeks.

(2) The period of leave referred to above should be specified by a Member in a declaration accompanying its ratification.

(3) A Member might subsequently deposit with the Director-General of the International Labour Office a further declaration extending the period of maternity leave.

8. (1) The leave referred to in Point 7(1) above should include a period of compulsory leave, the duration and distribution of which should be determined in each country after consulting the representative organizations of employers and workers, with due regard to the protection of the health of mother and child.

(2) On the basis of a medical certificate, additional leave should be provided before or after confinement in case of illness, complications or risk of complications arising out of pregnancy or confinement. The maximum duration of such leave might be fixed by the competent authority.

Benefits

9. (1) Cash and medical benefits should be provided, in accordance with national laws and regulations or other means referred to in Point 14 below, to women who are absent from work on maternity leave or additional leave (as referred to in Point 8(2) above).

(2) Cash benefits should be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.

(3) Cash benefits should be provided either: (a) at a rate which should not be less than two-thirds of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits; or (b) by means of a flat rate benefit of an appropriate amount.

(4) Where a woman does not meet the conditions to qualify for cash benefits under national laws and regulations or other means referred to in Point 14 below, she

should be entitled to adequate benefits out of social assistance funds, subject to the means test required for such assistance.

(5) Medical benefits should include prenatal, confinement and postnatal care, as well as hospitalization care, when necessary.

10. (1) A Member whose economy and social security system are insufficiently developed should be deemed to be in compliance with Point 9(3) above if cash benefits are provided at a rate no lower than the benefits payable for sickness or temporary disability in accordance with national laws and regulations or other means referred to in Point 14 below.

(2) A Member which avails itself of the possibilities afforded in this paragraph should, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organization, explain the reasons therefor and indicate the rate at which cash benefits are provided. In its subsequent reports, the Member should describe the measures taken with a view to progressively raising the rate of benefits.

Employment protection and non-discrimination

11. It should be unlawful for an employer to terminate the employment of a woman who is pregnant, absent on maternity leave or additional leave (as referred to in Point 8(2) above), and during a period following her return to work, to be prescribed by national laws and regulations, except on grounds unrelated to the pregnancy or childbirth and its consequences or nursing.

12. A Member should adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment.

Periodic review

13. A Member should examine periodically, in consultation with the most representative organizations of employers and workers, the appropriateness of extending the period of maternity leave or of increasing the amount or the rate of benefits referred to in Points 7(1) and 9(3) above.

Implementation

14. The Convention should be implemented by means of laws or regulations, except in so far as effect is given to it by other means such as collective agreements, arbitration awards or court decisions, or in any other manner as may be consistent with national practice.

D. Proposed Conclusions with a view to a Recommendation

CONTENT OF THE PROPOSED RECOMMENDATION

Maternity leave

15. (1) Members should endeavour to extend the period of maternity leave to at least 14 weeks.

(2) The prenatal portion of leave should be extended by any period elapsing between the presumed date of confinement and the actual date of confinement, without any reduction in any compulsory portion of postnatal leave.

(3) Provision should be made for an extension of the maternity leave in the event of multiple births.

(4) Measures should be taken to ensure that, to the extent possible, the woman should be entitled to choose freely the time at which she takes any non-compulsory portion of her maternity leave before or after childbirth.

(5) In the event that her child is hospitalized after the expiry of any compulsory post-natal leave, a woman should be entitled to postpone any remaining period of maternity leave until the child leaves hospital.

Maternity benefits

16. Where practicable, the cash benefits to which a woman is entitled during maternity leave and additional leave (as referred to in Point 8(2) above) should be raised to the full amount of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits.

17. To the extent possible, the medical benefits should include care given in a doctor's office, at home or in a hospital or other medical establishment by a general practitioner or a specialist; care given by qualified midwives or other maternity services at home, in hospital or other medical establishments; maintenance in hospitals or other medical establishments; any necessary pharmaceutical and medical supplies, examinations and tests prescribed by a medical practitioner or other qualified person; and dental and surgical care.

Financing of benefits

18. The cash and medical benefits should be provided through compulsory social insurance, public funds or in a manner determined by national law and practice.

19. Any contribution due under compulsory social insurance providing maternity benefits and any tax based upon payrolls which is raised for the purpose of providing such benefits, whether paid both by the employer and the employees or by the employer, should be paid in respect of the total number of men and women employed, without distinction of sex.

Employment protection and non-discrimination

20. A woman should be entitled to return to her former position or a similar one at the end of her maternity leave, the period of which should be considered as a period of service for the determination of her rights.

21. To ensure that maternity does not constitute a source of discrimination in employment, measures adopted should include a prohibition from requiring a test for pregnancy or a certificate of such a test when a woman is applying for employment,

except for work which under national laws or regulations is prohibited or restricted for pregnant or nursing women or which is prejudicial to the health of the woman and child.

Health protection

22. (1) The employment of a woman on work defined by the competent authority as prejudicial to her health or that of her child should be prohibited during pregnancy and up to three months after childbirth and longer if the woman is nursing her child.

(2) Where the woman's work is the subject of a prohibition of employment during pregnancy and nursing or involves a risk to her health or that of the child, measures should be taken to provide, on the basis of a medical certificate as appropriate, an alternative to such work in the form of: (a) an adaptation of conditions of work; (b) a transfer to another post, when such an adaptation is not feasible; or (c) leave, in accordance with national laws, regulations or practice, when such a transfer is not feasible.

(3) Measures referred to in Point 22(2) above should be taken in respect of certain types of work such as: arduous work involving the manual lifting, carrying, pushing or pulling of loads; work involving exposure to biological, chemical and physical agents which represent a reproductive health hazard; work requiring special equilibrium; work involving physical strain due to prolonged periods of sitting or standing, or to extreme temperatures, or vibration.

Provisions for nursing mothers

23. (1) A woman should be entitled to daily break(s) to nurse her child, which should be counted as working time and remunerated accordingly.

(2) The frequency and length of nursing breaks, pursuant to national law and practice, should be adapted to particular needs on the presentation of a medical certificate.

(3) Where practicable, it should be possible to combine the time allotted for nursing breaks to allow a reduction of hours of work at the beginning or at the end of the working day.

24. Provision should be made for the establishment of facilities for nursing under adequate hygienic conditions.

Related types of leave

25. (1) An employed woman or the employed father of the child should be entitled to parental leave during a period following the expiry of maternity leave.

(2) The period during which parental leave might be granted, the length of the leave and other modalities, including the payment of parental benefits, the use and distribution of parental leave between the employed parents, should be determined by national laws or regulations or in any manner consistent with national practice.

26. In case of sickness, hospitalization or death of the mother before the expiry of postnatal leave, the employed father of the child should be entitled to take leave of a duration equal to the unexpired portion of the post-natal maternity leave.

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